

**Court No. 2**

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

**Original Application No 53 of 2023**

Thursday, this the 23<sup>rd</sup> day of March, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)  
Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Sony Kushwaha Widow of 14657126M Nk Late Nagendra Singh Kushwaha, R/O : Vill & Post: Sampurna Nagar, Teh: Paliya, Distt: Lakhimpur Kheri UP- 262904.

..... Applicant

Ld. Counsel for the Applicant : **Shri Rahul Pal, Advocate**

Versus

1. Union of India and others through The Secretary Ministry of Defence South Block, New Delhi - 110011.
2. Chief of the Army - Staff, Integrated HQ of MoD (Army) DHQ PO, New Delhi - 110011.
3. Officer Incharge, EME Records Secunderabad, PIN 900453, C/O 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj, Uttar Pradesh - 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Chet Narayan Singh,  
Central Govt. Counsel.**

**ORDER (ORAL)**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

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 the order dated 11.10.2022 passed by the EME Record.*
- (B) To issue / pass an order or directions to the opposite parties to special family pension to the applicant from the next date his death alongwith 12% interest on arrear in the light of the judgment passed by the Hon’ble Apex Court and government letter dated 31.01.2001.*
- (C) To issue / pass any other order or direction as this Hon’ble Tribunal may deemed just, fit and proper under the circumstances of the case in the favour of the applicant.*
- (D) To award the cost of the case in favour of the applicant from the opposite parties.”*

2. This application has been preferred for seeking grant of special family Pension on the death of husband of the applicant Nk Late Nagendra Singh Kushwaha due to Coronary Insufficiency associated with Hypertrophied Heart (Heart Disease).

3. Facts, shorn of details, are that the husband of the applicant was enrolled in the Army on 04 Jan 2003 and was posted to EME Records, Secunderabad w.e.f. 25.05.2018. On 26.07.2020, while

going to Military Transport Lines of the unit from his Govt. accommodation for routine maintenance of vehicles, he fell down unconscious and evacuated to Military Hospital Secunderabad where he was declared dead. As per postmortem report dated 27.07.2020 issued by Gandhi Medical College, Musheerabad, Secunderabad, the cause of death was “**Coronary Insufficiency associated with Hypertrophied Heart**”, an heart disease. The competent respondent authority investigated the cause of death by holding a court of inquiry. In the inquiry report, the death of the deceased soldier was held as attributable to military service. On death of her husband, applicant was granted ordinary family pension. The applicant preferred an application for grant of special family pension which was denied by the respondents vide order dated 11.10.2022. Aggrieved by the decision of the respondents, applicant has filed this O.A. for grant of Special Family Pension.

4. Learned counsel for the respondents submitted that husband of the applicant died while on duty due to “**Coronary Insufficiency associated with Hypertrophied Heart**”. He further submitted that though the duly constituted Court of Inquiry had considered the death of the deceased soldier as attributable to military service, but medical authority in AFMSF-93 (Part II) considered the death of the

deceased soldier as neither attributable to nor Aggravated by military service, as there was no exceptional stress and strain as per charter of duties. On death of her husband the applicant was granted death benefits and ordinary family pension vide PPO dated 01.12.2021 after death of her husband. Learned counsel for the respondents further submitted that death of the husband of the applicant was considered as not attributable to military service by medical authority, as such, only ordinary family pension was admissible to the applicant which has already been granted vide PPO dated 01.12.2021 and special family pension has rightly been denied to the applicant. O.A is devoid of merits and is liable to be dismissed.

5. The question, therefore, arises for determination by this Tribunal is “whether the applicant whose husband died while on duty is entitled for grant of Ordinary Family Pension or Special Family Pension?”

6. Para 4.1 of Government of India, Ministry of Defence letter dated 31.01.2001 (Annexure A-24) deals with attributability and aggravation of cases for grant of pensionary benefits on death/ disability which reads as under:-



- 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.*

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7. Admittedly the applicant's husband was enrolled in Indian Army on 04.01.2003. On 26.07.2020 while coming from residence to duty station for routine maintenance of vehicles, he fell down unconscious and he was evacuated to Military Hospital, Secunderabad, where he was declared brought dead. Applicant was granted Ordinary Family Pension after death of her husband. 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 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”.***

8. On the basis of the Court of Inquiry the competent authority in its discretion has held the death of husband of the applicant as “attributable to military service” but medical authority has held that death of the husband of the applicant was not attributable to

military service and the applicant was denied entitled to Special Family Pension.

9. Once the death of husband of the applicant has been held to be Attributable to Military Service by Court of Inquiry, in action/non payment of Special Family Pension is a matter of concern for the respondents. Medical officer has opined cause of death as not attributable to military service stating that there was no exceptional stress and strain as per 14 days charger of duties. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Medical Board for declaring death of the husband of the applicant not attributable to Military Service is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. If this is the manner in which the Army Personnel are treated, it can be said that it is extremely unfortunate. The Army personnel are bravely defending the country even at the cost of their lives and we feel that they should be treated in a better and more humane manner by the governmental authorities, particularly in respect of their emoluments, pension and other benefits. ( As observed by the Hon'ble Supreme Court in the case of ***Nand Lal Vs. state of Uttarkahand and anr*** reported in (2010) 4 SCC 562). Since the circumstances of death of husband of the applicant are related to the duties of military services and was opined as

attributable to military service by Court of Inquiry, hence, applicant is entitled for special family pension.

10. We are of the considered opinion that in view of the foregoing reasons, the applicant is entitled for grant of Special Family Pension in place of Ordinary Family Pension. The impugned order passed by the respondents rejecting Special Family Pension is set aside. The respondents are directed to issue fresh PPO in favour of the applicant granting Special Family Pension instead of Ordinary Family Pension and pay the arrear amount of pension to the applicant after adjustment of Ordinary Family Pension already paid to her within a period of four months from the date of receipt of a certified copy of this order failing which they have to pay interest @ 8% on the amount due from the date of its accrual till the date of actual payment.

11. No order as to costs.

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

**(Maj Gen Sanjay Singh)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated: 23 March, 2023  
UKT/-