

Reserved Judgment

Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 116 of 2017

Wednesday, this the 7th day of February, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Lt Gen Gyan Bhushan, Member (A)

Smt Sadhana Sharma, Widow of Late No 13986870P
Sepoy Jitendra Kumar Sharma, Resident Of C/o SK Tiwari,
District- Sainik Welfare Office, Gali No 2, Rajendra Nagar,
Satna, State: Madhya Pradesh

.....Applicant

Ld. Counsel for the applicant: **Shri R. Chandra, Advocate**

Versus

1. Union of India, through, The Secretary, Ministry of Defence, Government of India, New Delhi – 11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi - 11.
3. The Officer-in-Charge, Army Medical Corps Records, Lucknow (U.P.)
4. The Chief Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)

....Respondents

Learned Counsel for the:
Respondents **Shri A.N. Tripathi,
Learned Counsel for the
Respondents alongwith Maj Rajshri
Nigarm, Departmental Representative**

ORDER

“Hon’ble Lt Gen Gyan Bhushan, Member (A)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by means of which the applicant has made the following prayers:-

(i) The Hon’ble Tribunal may be pleased to set aside the order dated 30.11.2009 (Annexure No A-1) and Order dated 15.03.2011 (Annexure No A-2).

(ii) The Hon’ble Tribunal may be pleased to direct the respondents to grant special family pension to the applicant w.e.f. 20.09.2003 along with its arrears with interest at the rate of 18 percent per annum.

(iii) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”

2. The brief facts as agreed by learned counsel for both the parties are that the husband of the applicant (Late) Sep Jitendra Kumar Sharma was enrolled in the Indian Army on 27.08.1993 and while he was posted at Military Hospital Jabalpur, met with a road accident when his motor cycle skidded and he succumbed to his injuries on 19.09.2003. In the Court of Inquiry, the Commandant of Military Hospital, Jabalpur, has stated that no one is to be blamed for the accident and his death is attributable to military service. The applicant, wife of the deceased soldier, is in receipt of ordinary family pension. She approached the competent authority for grant of special family pension which was rejected and subsequently her appeal was also rejected. Being aggrieved, the applicant has filed this application for grant of special family pension.

3. We have heard Shri R Chandra, learned counsel for the applicant and Shri A.N. Tripathi, learned counsel for the respondents and perused the record.

4. The delay in filing the Original Application has been condoned vide this Tribunal order dated 20.01.2017.

5. Learned counsel for the applicant has submitted that husband of the applicant died on 19.09.2003 at Jabalpur due to fatal head injury in road accident while he was posted with Military Hospital, Jabalpur. On 06.05.2004, respondent No 4 issued PPO No F/NA/1824/04 dated 06.10.2006 under which ordinary family pension was granted to the applicant w.e.f. 20.09.2003 which she is continuously getting. In the year 2005, applicant approached respondents for grant of special family pension but the same was rejected stating that she was not entitled for special family pension as her husband's death was not considered as attributable to military service. Subsequently the applicant has been approaching the respondents but the request for grant of special family pension has been rejected. Learned counsel for the applicant further submitted that since the Court of Inquiry has considered the death of husband of the applicant as attributable to military service, as such, as per Para 213 of Pension Regulation for the Army 1961 (Part I), she is entitled to special family pension and it should be granted to her. He submitted that in similar case, Armed Forces Tribunal, Kochi Bench has granted relief.

6. **Per Contra**, learned counsel for the respondents has submitted that the applicant's husband while posted at Military Hospital, Jabalpur, had gone to his uncle's home on 18.09.2003 for some urgent work, who was staying near Government Medical College, Jabalpur. Near blind turn at Garha Police Station, husband of the applicant lost his balance and his motor cycle skidded into the road divider and he died due to head injury. The applicant was sanctioned ordinary family pension vide PCDA (Pension), Allahabad PPO No F/NA/1824/04 dated 06.05.2004. Subsequently the applicant requested for grant of special family pension which was rejected by the competent authority stating that death of the applicant's husband was due to road accident while he was going to his uncle's home and hence is not attributable to military service. Subsequently her representation/appeals for grant of special family pension have been rejected keeping in view the policy on the subject.

7. The main issue to be decided in this case is that if the Court of Inquiry has considered the death of the husband of the applicant as attributable to military service, in that case, is the applicant entitled to grant of ordinary family pension or special family pension?

8. We have gone through the opinion of the Court of Inquiry and the remarks of the Commandant on Court of Inquiry which are attached as M.A. No 1608 of 2017 and the same are re-produced as under:-

“OPINION OF THE COURT

1. *On the fateful night of 18 Sep 03 a motorcycle accident took place near Garha Police Station Jabalpur due to dark night, blind turn and sudden road divider in which owner and driver of the motorcycle Sep Dvr (MT) JK Sharma of HM sustained severe head injury and later succumbed to his injuries in Govt Medical College, Jabalpur and Sep Dvr (MT) AK Sharma sustained severe multiple injuries but survived.*

2. *Both of them were not found to be under the influence of alcohol and were wearing helmets at the time of accident.*

3. *Police investigation revealed no foul play in the cause of motor cycle accident.*

4. *No one to be blamed.*

Presiding Officer : Sd/- x x x x
MR-05376L Lt Col SK Jena

Members : 1. Sd/- x x x x
NTR-16541L Maj SC Kaushal
2. Sd/- x x x x
MR-07862F Lt Badal Parikh”

**“REMARKS OF COMMANDANT : MH JABALPUR ON THE COURT
OF INQUIRY IN RESPECT OF 13986870P LATE SEP/DVR
JK SHARMA, WHO DIED ON 10 SEP 2003**

1. *I fully agree with the finding and opinion of the Court of Inquiry regarding the accidental death of Late Sep Dvr JK Sharma on 19 Sep 2003.*

2. *No one to be blamed and his death is attributable to military service.*

3. *I recommend all the financial benefit to be paid to his next of kin.*

Place : Jabalpur
Date : 27 Dec 2003

Sd/- x x x x
(PN Singh)
Brig
Commandant”

9. Letter from AG's Branch, Army Headquarters rejecting the appeal for grant of special family pension which is attached as Annexure as R-7 is reproduced as under :-

*"Integrated Headquarters of MOD (Army)
Addl Dte Gen Personnel Services/PS-4
Adjutant General Branch
Army Headquarters
DHQ PO, New Delhi – 110011*

B/38046/46/07/AG/PS-4(Imp-I)

30 Nov 2007

*Smt Sadhana Sharma W/o
Late Sep Jitender Kumar Sharma
C/o SP Goswami, Behind Dr Deepak Aggarwal Nursing Home
Boda Road, Rewa (MP)*

**Appeal against rejection of Special Family Pension
In r/o No. 13986970 Late Sep Jitender Kumar Sharma**

1. *I am directed to inform you that your appeal for grant of Special Family Pension in respect of above named individual has been carefully considered by the appellate Committee on First Appeals.*
2. *Your husband, No.13986970 Late Sep Jitender Kumar Sharma was enrolled in Army on 27 Aug 1993 and died on 19 Sept 2003 due to injuries sustained in Road accident while he was going to his uncle's place in late hrs. Therefore, his death in such circumstances is not in any way related to duties of military service and is not attributable to military service.*
3. *You are, therefore, not entitled to Special Family Pension under the Rules. It is, therefore, regretted that your request cannot be acceded to.*
4. *In case you are not satisfied with above decision you may submit a second Appeal to Defence Minister's Appellant Committee on Pensions within six months. You may also approach Kendriya Sainik Board, Min of Defence RK Puram, New Delhi for Financial Assistance, if admissible under the rules, out of Raksha Mantri's Discretionary Fund.*

*Sd/- x x x x x
(DV Pardasani)
Dy. Director/PS-4(Imp-I)
For Adjutant General*

Copy to :-

1. *PCDA(P), Allahabad*
2. *AMC, Records, Lucknow – wrt his Letter No. 13986970/FP-III/Appeal dated 07 Dec 2006. All service/medical documents are returned herewith. Their receipt may please be acknowledge.*
3. *Dy. DGAFMS (Pens)"*

10. Order of rejection of special family pension on the second appeal by the Ministry of Defence which is given at R-10 is also reproduced as under :-

*“Registered
No. 2(3)/2010/D(Pen/App)
Government of India
Ministry of Defence*

New Delhi, the 15th March, 2011

To.

*Smt. Sadhana Sharma
W/o Late Sep Jitendra Kumar Sharma
C/o Shri Naresh Singh,
House Board Colon,
Bada Road
Rewa (M.P.)*

Subject : Second appeal against rejection of Special Family Pension in respect of Smt. Sadhana Sharma W/o Late Sep Jitendra Kumar Sharma (No 13986870P)

Madam,

1. I am directed to refer to your 2nd appeal dated 15.11.2009 against rejection of your 1st appeal by the Service Hqrs for grant of Special Family Pension and to say that the same has been considered by Defence Minister's Appellate Committee on Pension.

2. The Committee on perusal of the Service/Medical documents of your husband has observed that he died on 19.09.2006 due to "Injuries sustained in road accident. On 18.09.2006 while returning home on his motorcycle along with another unit personnel riding in the pillion the motor cycle skidded and they met with a road traffic accident. Your husband sustained fatal head injuries in the accident. Therefore, death of your husband is not attributable to military service. Hence, the Committee has not accepted your 2nd appeal for grant of Special Family Pension.

Yours faithfully,

*Sd/- x x x x
(N.B. Mani)*

Under Secretary to the Govt. of India

Copy to :-

*1. The PCDA(P), Allahabad. 2. Dy. DADS, Allahabad. 3. The Officer-in-Charge, Records Army Medical Corps, Pin-900450, c/o 56 APO. All Service/medical documents are returned herewith.
4. D.B. 5. AGPS-4 (Imp-I). Their file referred to above is returned herewith."*

11. Para 213 of the Pension Regulations for the Army, 1961 (Part-1) relating to grant of special family pension reads as follows :-

“213. 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

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

12. A plain reading of these documents indicate that the Court of Inquiry has considered the death of the husband of the applicant as attributable to military service which is apparent from categorical remark of the Commandant. Whereas the appeals have been rejected on the ground that death is not attributable to military service which is contrary to the remark of the Commandant of Military Hospital, Jabalpur, on the Court of Inquiry. In case the remark rejecting the appeal is taken into account, in that case, the death has not been considered attributable to military service and therefore she is not entitled to any family pension whereas she has been granted family pension as per para 213 of Pension Regulations for the Army. Respondents have not been able to produce any letter or communication as comment/remark which reflects adversely on opinion of the Court of Inquiry and the remarks of Commandant. Therefore, it leads to the conclusion that remarks of the Court of Inquiry are final and based on that as per Pension Regulation, family pension needs to be granted. Respondents have also not been able to produce any policy or order to indicate that in case death while in service is considered as attributable to military service in that case only ordinary family pension is to be given, whereas para 213 of Pension Regulation clearly states that ‘a special family pension may be granted to the family of an individual if his death was due to a wound, injury or disease which was attributable to military service.’

13. Apparently the competent authority while granting family pension has considered the death of the husband of the applicant as attributable to military service, therefore, in case the death is

considered as attributable to military service then she is entitled to special family pension and not ordinary family pension which is evident from para 213 of the Pension Regulations.

14. In view of the above, we are of the considered view that since the Court of Inquiry has considered the death as attributable to military service which is evident from remarks of the Commandant, therefore, as per provisions of para 213 of Pension Regulations, the applicant is entitled to special family pension.

15. Accordingly, the Original Application No 116 of 2017 is allowed. The impugned orders rejecting the grant of special family pension are set aside. The respondents are directed to grant special family pension to the applicant from the date of death of her husband with consequential benefits (less which has already been paid), within four months from the date of receipt of certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Date : February 2018

ukt/-