

E-Court Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 660 of 2021****Friday, this the 18th day of February, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt. Ganga Thapa, Widow of late Sub, JC No. 208714-M, Dharam Singh, R/o A-81, Rajeev Nagar, behind Kamakhya School, Kalyanpur, Lucknow- 226022.

.... Applicant

Ld. Counsel for the: **Shri Parijaat Belaura, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Headquarters of Ministry of Defence Government of India, South Block, New Delhi-110011.
3. Officer in charge, Army Medical Corps, Cantt, Lucknow- 226002.
4. PCDA (P), Draupadi Ghat, Allahabad (U.P) -211014.

..... Respondents

Ld. Counsel for the Respondents. **:Shri Arun Kumar Sahu,**
Central Govt Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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, whereby the applicant has sought following reliefs:-

(i) To set aside Order dated 28.04.2004 (Anx-1), Order Dated 10.08.2018 (Anx-2), Order dated 20.04.2020 (Anx-3) and Injury Report if any (after calling for records).

(ii) To pay Special Family Pension w.e.f. next date of death of applicants husband i.e. 13.03.2003 considering death attributable to service.

(iii) To pay Ex-Gratia amount of @ Rs. 10,00,000/-

(iv) To pay difference of arrear of Special Family Pension along with 12% interest from 13.03.2003 till it is actually paid.

(V) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.

2. Counter affidavit filed by the respondents is taken on record.

3. Brief facts of the case giving rise to this application are that the applicant’s husband was enrolled in the Indian Army on 30.03.1976 and he died on 12.05.2003 at 174 Military Hospital. Post Mortem was carried out on 12.05.2003 at Civil Hospital Bathinda but cause of death was unknown. Since

husband of applicant died in hospital in working time as such claim for special family pension was processed by Hospital considering the death of husband of the applicant as attributable to service but PCDA Allahabad without any authority rejected the claim on the ground that death was not due to wound, injury or disease which is neither attributable to nor aggravated by Military Service. Applicant was granted ordinary family pension from the next date of death of her husband. Applicant filed mercy petition for grant of special family pension which was rejected vide order dated 10.08.2018. This O.A. has been filed for grant of Special Family Pension and Ex-Gratia lump-sum-compensation of Rs 10 Lacs.

4. Ld. Counsel for the applicant pleaded that husband of the applicant died while on duty as such she is entitled for grant of special family pension. as per Appendix II of Pension Regulations for the Army, 1961 which deals with Entitlement Rules for Pensionary Awards, 1982 and Rules 5, 9, 14 (b) and 20 of Entitlement Rules for Casualty Pensionary Awards, 1982 applicant is entitled to Special Family Pension. The learned counsel has quoted relevant rules which are reproduced below:-

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-

Prior to and during service.

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

Onus of Proof.

9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

Disease

14. **In respect of disease, the following rules will be observed:-**

(a) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:

(i) That the disease has arisen during the period of military service, and

(ii) That the disease has been caused by the conditions of employment in military service.

(b) If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.

(c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services.”

5. Learned counsel for the applicant pleaded that since applicant's husband died while in service, therefore, his death should be attributable to military service and applicant should be entitled to Special Family Pension along with Ex-Gratia lump-sum-compensation.

6. Per contra, the respondents have contended that as per para 213 of Pension Regulations for the Army, 1961 (Part-1), Special Family Pension is granted to the family of an individual if death is due to or hastened by;-

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

(b) The aggravated by military service of wound, injury or decease which existed before or arose during military service.

7. His submission is that since the aforesaid conditions are not fulfilled in the case of applicant's husband, therefore, she is not entitled to Special Family Pension. He has further submitted that applicant's husband died on account of constitutional decease as held by the competent medical authorities and his death was neither attributable to nor aggravated by military service, hence applicant is not entitled for grant of Special Family Pension. The pension sanctioning authority while adjudicating the case of applicant has rejected grant of Special Family Pension claim on the basis of views

expressed by medical authorities which held his death as NANA. Respondents' learned counsel further submitted that case of applicant's husband is not covered under paragraph-6 of Entitlement Rules for Casualty Pensionary Awards, 1982 and according to which there should be causal connection between death and military duty and since in this case there was no causal connection of death with military duty, therefore applicant is not entitled to Special Family Pension. His further contention is that main condition to be satisfied for grant of special family pension and the payment of Ex-Gratia lump sum compensation in the specified circumstances is that the death of the employee concerned should have occurred in the actual performance of a bonafide official duty. The Ex-Gratia lump sum compensation may not be sanctioned in cases where the deceased soldier was not on duty in terms of Entitlement Rules. The Ld. Counsel for the respondents submitted that the question whether death was attributable to or aggravated by military service is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982. He pleaded the O.A. to be dismissed.

8. After hearing both the sides and perusing the evidence on record, the questions which need to be answered are two folds:-

- (a) Whether death of husband of the applicant was attributable to and aggravated by military service?

(b) If yes, is the applicant entitled for Ex-Gratia lump sum compensation and Special Family Pension?

9. The Government of India, Ministry of Defence letter No.20(1)/98-D(Pay/Services) dated 22.09.1998 with regard to conditions of governing the payment of Ex-Gratia lump-sum compensation and guidelines reads as under :-

“I am directed to refer to Government of India, Ministry of Personnel, Public Grievance & Pension, Department of Pension & Pensioners’ Welfare O.M. No.45/55/97-P&PW(C) dated 11.9.98 and state that the President is pleased to decide that the families of Defence Service personnel who die in harness in the performance of their bonafide official duties, shall be paid the following ex-gratia lump sum compensation:-

(a)	<i>Death occurring due to accident in the course of performance of duties.</i>	<i>Rs.5.00 lakhs”</i>
-----	--------------------------------------------------------------------------------	-----------------------

Subsequently, this table has been modified in the year 2010.

10. Coming to the first limb i.e. is the death attributable to and aggravated by military service?” The husband of the applicant was in low medical category for Primary Hyper Tension and Obesity prior to his demise. The opinion of the Classified Specialist 174 Military Hospital dated 12.05.2003 reveals that husband of the applicant was a heavy drinker and also in low medical category for alcohol

dependence syndrome till 14 September 2002. We find that death of husband of applicant (Late Sub Dharam Singh) had no relation with military service, therefore it was considered as neither attributable to nor aggravated by military service by competent medical authority. Hence, death of applicant's husband shall be deemed to be NANA.

11. Coming to the second issue, as to, "is the applicant entitled for Ex-Gratia lump sum compensation as also Special Family Pension?"

12. From the perusal of policy with regard to payment of Special Family Pension, it is obvious that if a soldier dies in performance of his bonafied duties, then his NOK shall be entitled for Special Family Pension. In the case in hand we are clear that death in respect of husband of the applicant was not due to harness and, therefore, the competent authority has given their opinion that his death was not attributable to military service. More so, it is apparent that death of husband of the applicant Late Sub Dharam Singh has no causal connection with military service.

13. Since husband of the applicant, as per the provisions of Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982, was not on bonafide military duty therefore, the death which occurred on 12.05.2003 is to be deemed as NANA and hence deceased soldier's NOK is not entitled to grant of Ex-gratia lump sum. The charter of duties of husband of the applicant did not reveal

exposure to exceptional service related and strain. Hence, disease was conceded as neither attributable to nor aggravated by military service in terms of Para 47, Chapter VI, GMO 2002.

14. Relying upon the Hon'ble Supreme Court judgment rendered in SLP(C) No. 23727 of 2008 in the case of ***Union of India vs. Damodaran AV***, learned counsel for the respondents averred that in the aforesaid judgment their Lordships have held that the Medical Board is an Expert body and its opinion be given due weight, value and credence. He submitted that since the competent medical authorities have held that death of the husband of the applicant has no relation to military service and was not influenced by military service, therefore the death was regarded as NANA.

15. Admittedly, death of the husband of the applicant has no causal connection with service as held by the medical authorities and the pension sanctioning authority, hence applicant was granted enhanced rate of Ordinary Family Pension @ Rs. 3850/- per month wef 13.05.2003 to 12.05.2010. Thereafter, ordinary family pension @ Rs. 2310/- per month with effect from 13.05.2010 to till widowhood was granted vide PCDA (P), Allahabad PPO dated 25.05.2004. Thus, the refusal by the competent authority for grant of Ex-Gratia lump-sum compensation and Special Family Pension to applicant is only on the grounds aforesaid.

16. In view of the above, we are of the view that since death in respect of applicant's husband has no causal connection with military service, applicant is not entitled to Special Family Pension and Ex-Gratia lump-sum compensation in view of the observations hereinabove.

17. Original Application deserves to be dismissed. It is accordingly **dismissed**.

18. No order as to costs.

19. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :18 February, 2022
Ukt/-