

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 573 of 2021**Thursday, this the 17th day of February, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Urmila Devi, widow of No 14613687F Havildar Late Uday Narayan Dubey, R/o House No 5, Krishna Street, Shivpuram Satbari Road, Near Sant Sewak School, Kanpur, Pin-208011 (U.P.).

..... Applicant

Learned counsel for the Applicant : **Shri Shiv Kumar Saroj**, Advocate
Shri VP Pandey, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
 2. The Chief of Army Staff, Integrated Head Quarter, Ministry of Defence (Army), South Block, New Delhi-110011.
 3. Officer Incharge, EME Records, PIN-900453, C/O 56 APO.
 4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.
 5. Zila Sainik Welfare Office, Raibareli, U.P.
-Respondents

Learned counsel Respondents : **Shri Anurag Mishra**, Advocate
Central Govt Counsel

ORDER (Oral)

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

(i) To set aside/quash the rejection order passed by Respondent No 5 as contained in Annexure No 1 to the O.A.

(ii) To issue/pass an order or direction to the respondents to grant special family pension to the applicant w.e.f. 21.02.2014.

(iii) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(iv) Cost of the OA be awarded to the applicant.

2. Brief facts of the case are that husband of the applicant (No 14613687F Hav (late) Uday Narayan Dubey) was enrolled in the Army on 07.01.1989. While serving with Station Workshop, Lucknow he proceeded to railway station on 13.02.2014 to drop his relatives. While returning to his residence at around 2315 hrs, he was hit by an unknown speeding four wheeler at SP Marg. He was evacuated to Command Hospital, Lucknow and during treatment he succumbed to his injuries on 21.02.2014. The cause of death was 'Severe Head Injury (Optd)'. A Court of Inquiry was conducted which declared applicant's death as attributable to military service. The applicant was paid her dues and Ordinary Family Pension vide PPO No. F/NA/21174/2014 dated 19.11.2014. On 08.08.2019 (Annexure A-6) claim for grant of Special Family Pension was processed which was rejected by PCDA (P), Allahabad vide letter dated 23.08.2019 (Annexure A-1) stating that death in respect of

applicant's husband had no causal connection with military service. On 10.11.2020 applicant submitted representation to Union of India, Ministry of Defence for grant of Special Family Pension but it was turned down with an advice to prefer appeal to AG/PS-4 which the applicant did not prefer and has filed this O.A. for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that since applicant's husband's death was considered as attributable to military service (Annexure A-5) by a duly constituted C of I, she is entitled to grant of Special Family Pension in accordance with Entitlement Rules for Casualty Pensionary Awards-2008 (Revised Edition). He pleaded for grant of Special Family Pension to the applicant.

4. Per contra, learned counsel for the respondents submitted that applicant's husband died on 21.02.2014 due to road accident on 13.02.2014 at about 2315 hrs and since he was not on military duty at that time, applicant's death cannot be regarded as attributable to military service. He further submitted that as far as grant of Special Family Pension to the applicant is concerned, since the husband of the applicant died due to severe head injury (Optd) as a result of road accident, though the death was considered by the duly constituted C of I as attributable to military service, the claim to this effect was rejected by the PCDA (P), Allahabad stating that Special Family Pension is granted in the case where death has been declared as attributable to military service under Entitlement

Rules – 2008 by the competent authority. His further submission is that in the instant case, death in respect of applicant's husband does not fall under the ambit of duty in accordance to para 9 of Entitlement Rules-2008 for establishing causal connection between death and military service. Therefore, declaration of attributability certificate by Army authorities is not in consonance with provisions laid down on the subject issue and his death is not categorized under Cat 'C' of Govt of India, Min of Def letter dated 31.01.2001 for granting Special Family Pension. He submitted that in such circumstances, applicant is not entitled to Special Family Pension. He pleaded for dismissal of O.A.

5. We have heard Shri Shiv Kumar Saroj and Shri VP Pandey, learned counsel for the applicant and Shri Anurag Mishra, learned counsel for the respondents and have also perused the record.

6. After having heard the submissions of learned counsel for the parties, we find that there are certain facts admitted to both the sides, i.e., applicant's husband was enrolled in the Indian Army on 07.01.1989 and he met with an accident on 13.02.2014 at around 2315 hrs while returning from railway station by motor cycle and died on 21.02.2014 while in hospital. The Court of Inquiry opined the death as attributable to military service. Claim for grant of Special Family Pension was rejected vide order dated 23.08.2019. Relevant part of the aforesaid order, for convenience sake, is reproduced as under:-

"In this regard it is stated that SFP is granted in the case where death has been declared as attributable to military service under ER-2008 by the competent authority (i.e. Officer I/C/ of Record Office). In instant case, death does not seem to cover under ambit of duty in accordance to para 9 of ER, 2008 for establishing causal connection between death and military service. Therefore the declaration of attributability certificate by army authorities may not be in consonance with provisions laid down on subject issue and his death may not be categorized under cat 'C' of GOI, MoD letter dated 31.01.2001 for granting SFP".

7. The PCDA (P), Allahabad has denied Special Family Pension to the applicant on the reason that death of her husband was not attributable to military service as there was no causal connection of death with military service. We have observed that for getting disability pension, in respect of injury sustained/death during the course of employment, there must be some causal connection between the injury sustained/death and military service, and this being not the case in respect of the applicant, as there was no causal connection between the accident and military service, she was denied Special Family Pension.

8. Further, with regard to grant of Special Family Pension to next of kin of the deceased soldier, para 9 of the Entitlement Rules-2008 is also relevant 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 shall be treated on 'duty'.

(i) When performing an official task or a task failure to do which would constitute an offence, triable under the disciplinary code applicable to him.

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

(iii) During the period of participation in recreation and other unit/sports activities organized or approved by service authorities and during the period of travelling in relation thereto."

9. In the present case we are clear that since the deceased soldier was not on duty when the accident occurred resulting into his death subsequently, the applicant does not seem to be entitled to Special Family Pension.

10. In a more or less similar matter, Civil Appeal No. 4981 of 2012 decided on 20.09.2019 by the Hon'ble Apex Court in ***Secretary Govt of India & Others Vs. Dharamveer Singh***, the facts of the case were that respondent in that case met with an accident during the leave period, while riding a scooter and suffered head injury with '**Faciomaxillary and Compound Fracture 1/3 Femur (LT)**'. A Court of Inquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave Report, dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under column 3 (c) was that "No one was to be blamed for the accident. In fact respondent lost control of his own scooter". In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which

held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of **Madan Singh Shekhawat vs. Union of India & Ors**, decided on 17.08.1999 was allowed holding that respondent was entitled to disability pension. Aggrieved by the same, a Civil Appeal was filed in which the Hon'ble Apex Court framed following three points for consideration:-

- (a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?
- (b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?
- (c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?

11. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, he is to be treated on duty.

12. While deciding the second question the Hon'ble Apex Court held that while deciding the question of admissibility of disability pension, it has to be seen that there must be some

causal connection between the injury or death and military service. The injury or death must be connected with military service or the injury or death must occur in the performance of military duty. When a person is going on a scooter to purchase house hold articles, such activity, even remotely has no causal connection with the military service. In the present case there seems to be no causal connection of accident with military duty.

13. Regarding question number 3, the Hon'ble Apex Court held that if any causal connection has not been found between the disabilities/accident and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well as the various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or proceeding on leave, it shall be treated to have causal connection with military service and for such injury, resulting in disability/death, the injury/death would be considered as attributable to or aggravated by military service.

14. The Hon'ble Apex Court while summing up has also taken note of the guiding factors of the Armed Forces Tribunal, in the case of **Jagtar Singh v. Union of India & Ors**, decided on November 02, 2010 in T.A. No. 60 of 2010, approved in the case of **Sukhwant Singh** and **Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability is to be required to be

dealt accordingly. Those guiding factors are reproduced below for the ready reference:-

"(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.

*(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by **Rule 12 of the Entitlement Rules, 1982**, it would neither be the legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.*

(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on

the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

15. We have considered the applicant's case in view of above guiding factors and we find that while returning from railway station after dropping his relatives applicant's husband met with an accident on 13.02.2014 resulting in his death on 21.02.2014. The activity in which the accident occurred and death was caused being not connected with his military service in any manner, applicant is not entitled to Special Family Pension as the accident in which her husband died has no causal connection with military service.

16. In the result, we hold that claim of the applicant for grant of Special Family Pension has been rightly rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

17. No order as to costs.

18. Pending misc application(s), if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 17th February, 2022

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(Justice Umesh Chandra Srivastava)
Member (J)