

e- Court

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

ORIGINAL APPLICATION No 486 of 2021

Friday, this the 04th day of February, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Poonam Singh No. 2500495M W/o Late Sep Ajay Kumar Singh Resident of -Diptiganj Railway Crossing, Harihrpur Malak, Nilmatha, Lucknow.

..... Applicant

Learned counsel for the : **Shri Angrej Nath Shukla,**
Advocate.
Applicant

Versus

1. Union of India through Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
2. Records The Punjab Regiment, PIN 908761, C/o 56 APO.
3. Welfare Officer, HQ Central Command (A), Lucknow (UP)-226002.
4. Office of PCDA (P) Gts-4 Section, Allahabad.

.....Respondents

Learned counsel for the : **Shri RC Shukla,** Advocate
Respondents. 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:-

- a) *To direct the respondents/ competent authority to consider and take necessary action for payment of Ex-Gratia claim of No. 2500495M Late Ajay Kumar Singh regarding which she has submitted application on 08.07.2021 through registered post by ventilating her grievances which is still pending for consideration.*
- b) *To issue any other appropriate order or direction as this Hon'ble Tribunal deem fit and proper in nature and circumstances of the case.*
- c) *To allow this application in favour of the applicant with cost.*

2. Brief facts of the case giving rise to this application are that applicant's husband was enrolled in the Indian Army on 04.01.2005 and died on 13.01.2014 at Pratapgarh due to drowning accident in river Sai while availing annual leave for the period 28.12.2013 to 26.01.2014. The Court of Inquiry dated 21.04.2014 conducted by Purva Uttar Pradesh & Madhya Pradesh Sub Area declared his death as neither attributable to nor aggravated by military service (NANA). She was granted enhanced family pension which she is in receipt of vide PPO No F/NA/Corr/20350 dated 31.12.2015. In regard to grant of Ex-gratia payment, the applicant has submitted an application dated 08.07.2021 to Records, the Punjab Regiment which as per applicant has not been replied. Applicant has filed this O.A. for grant of ex-gratia compensation on death of her husband.

3. Learned counsel for the applicant pleaded that applicant's husband died on 13.01.2014 due to slipping and drowning accident

while availing duly sanctioned annual leave for the period 28.12.2013 to 26.01.2014. He further submitted that this Tribunal in the case of Ex Nk (ACP Hav) Pandu Kumar Reddy has held that armed forces personnel while availing casual leave or annual leave, should be treated on duty and since the applicant's husband was on annual leave she should be entitled to ex-gratia compensation in terms of clause (a) of letter dated 02.11.2016 which specifies that death occurring due to accidents in course of performance of duty should be attributable to military service. He further submitted that death in respect of applicant's husband being occurring due to accident, she should be granted ex-gratia compensation. In support of the aforesaid submission, learned counsel for the applicant has cited judgment passed by AFT, Regional Bench, Jaipur in O.A. No. 843 of 2010, Smt Sushila Devi vs UOI & Ors decided on 10.04.2015, AFT, Regional Bench, Kolkata in T.A. No. 07 of 2012, Ritu Raj Pandey vs UOI & Ors decided on 10.05.2013. He pleaded for grant of ex-gratia compensation to the applicant.

4. On the other hand, learned counsel for the respondents submitted that applicant's husband died in a drowning accident on 13.01.2014 while on annual leave. He further submitted that after the incident, Court of Inquiry was conducted on the directions of GOC, Purva Uttar Pradesh & Madhya Pradesh Sub Area on 21.04.2014 which has held cause of death not attributable to military service. He further submitted that taking into consideration of Rule 6 and 9 (d) of Entitlement Rules for Casualty Pensionary Awards-2008, the respondents have sanctioned and granted enhanced rate of family pension vide PPO No F/NA/21225/2014

dated 06.01.2015 which she is receiving regularly. His further submission is that applicant's representation dated 08.07.2021 was replied on 28.08.2021 intimating that since her husband died while on leave and not during performance of bonafide military duty as mentioned in policy letter dated 22.09.1998, she is not entitled to ex-gratia compensation. He pleaded for dismissal of O.A.

5. Heard the learned counsel for the parties and perused the material placed on record. We have also gone through the rejection order of ex-gratia compensation claim.

6. The Government of India, Ministry of Defence letter No.20(1)/98-D(Pay/Services) dated 22.09.1998, with regard to conditions 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)	Death occurring due to accidents in the course of performance of duties	Rs. 5.00 lakhs
(b)	Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements, etc.	Rs. 5.00 lakhs.
(c)	Death occurring during (i) enemy action in international war or border skirmishes; and (ii) action against militants, terrorists, extremists, etc.	Rs. 7.50 lakhs.

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

7. We are clear that the cause of death of applicant's husband (drowning accident on 13.01.2014 while on annual leave) is neither attributable to nor aggravated by military service as held by the Court of Inquiry dated 21.04.2014. In the circumstances, we are of the considered opinion that death of applicant's husband has no relation with military service.

8. From the perusal of policy with regard to payment of ex-gratia compensation, it is apparent that NOK of deceased incumbent is granted the same if a soldier dies in performance of bonafied military duties as mentioned in policy letter dated 22.09.1998. In the case in hand we are clear that death in respect of applicant's husband was not due to the circumstances mentioned in para 6 above, applicant is not entitled to ex-gratia compensation. More so, it is obvious that late Sep Ajay Kumar Singh died due to accident while he was at home which has no causal connection with military service.

9. We have also gone through the citations referred by learned counsel for the applicant and we find that facts and circumstances in those cases are different with the case in hand. Admittedly, the husband of the applicant was on leave and died due to accidentally slipped and drowned in river Sai on 13.01.2014, which has no causal connection with military service. Thus, the respondents seem to have rightly rejected the claim of ex-gratia compensation vide letter dated 28.08.2021. Generally the main condition to be satisfied for the payment of the ex-gratia lumpsum compensation in the specified

circumstances is that the death of the employee concerned should have occurred in the actual performance of bonafide military duties, in other words, a causal connection should be established between the occurrence of death and government service. Since death of applicant's husband is not covered under the circumstances specified in policy letter dated 22.09.1998, she is not entitled to ex-gratia compensation.

10. In view of the facts explained above, original application deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

12. Pending miscellaneous application(s), if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 04th February, 2022.

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(Justice Umesh Chandra Srivastava)
Member (J)