

**Court No. 1 (E Court)**

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

**ORIGINAL APPLICATION No. 483 of 2021**

Friday, this the 04<sup>th</sup> day of February, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Sadhwi Singh, Next of Kin of No 13978828F Late Hav (DMT)  
Rajesh Kumar Singh, Resident of – Durgapuri Colony Chauraha,  
Shakurpur Road, Nilmatha, Lucknow.

..... Applicant

Counsel for the Applicant : **Shri Angrej Nath Shukla, Advocate**

Versus

1. Union of India through Chief of Army Staff, IHQ of MoD (Army)  
South Block, New Delhi.
2. Topkhana Abhilekh, Artillery Records, PIN – 908802, C/o 56  
APO.
3. Welfare Officer, HQ Central Command (A), Lucknow (U.P.)-  
226002.
4. PCDA (P) (Army) Gts- 4 Section, Draupadi Ghat, Allahabad  
(U.P.)- 211014.

.....Respondents

Counsel for the Respondents : **Mrs Prerna Singh,  
Central Govt. Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

- “(a) To direct the respondents/competent authority to consider and take necessary action for payment of Ex Gratia claim of No 13978828F Late Hav (DMT) Rajesh 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. Counter affidavit filed by the respondents is taken on record.

3. Facts giving rise to Original Application in brief are that husband of applicant was on 40 days part of annual leave from 19.06.2009 to 28.07.2009. He fell sick and was hospitalized. During treatment he died on 11.08.2009 due to ‘DECOMPENSATED CIRRHOSIS OF LIVER (HBV RELATED)’. His death was considered as attributable to military service. Applicant was granted Special Family Pension. She was given all terminal benefits. She

was also paid Rs. 30,000/- and Rs. 70,000/- as one time grant from Army Central Welfare Fund. Her claim for grant of ex-gratia was rejected as husband of the applicant was admitted in hospital while he was on leave and died. Being aggrieved, the applicant has filed this Original Application for grant of grant of ex gratia payment.

4. Learned counsel for the applicant submitted that husband of the applicant was admitted in Command Hospital, Northern Command, Udhampur on 03.07.2009 and further referred to R & R Hospital, New Delhi on 16.07.2009 and died on 11.08.2009 at R & R Hospital, New Delhi. A Court of Inquiry was held and death was considered as attributable to military service. Applicant was granted various terminal benefits. Applicant submitted application dated 08.07.2021 before respondents for grant of Ex Gratia compensation which was not granted. He submitted that injury or disability which does not occur due to the negligence/ or misconduct of concerned army personnel or on account of self infliction shall be considered to have causal connection with the military service, even though on leave. Learned counsel for the applicant submitted that in various judgments it has been held that leave is considered as duty, hence applicant is entitled for Ex Gratia. As per clause (a) of letter

dated 02.11.2016 legibility criteria for grant of Ex Gratia is 'Death occurring due to accidents in course of performance of duties'. Learned counsel for the applicant prayed that directions be issued to respondents to grant Ex Gratia payment to the applicant.

5. Per Contra, learned counsel for the respondents submitted that death of the husband of the applicant was found attributable to military service by Medical Authority at Army Hospital, R &R, New Delhi as the viral infection (HBV) was contracted during military service which led to cirrhosis of liver as per para 18 of Chapter II of Guide to Medical Officer 2008. After death of her husband, applicant was granted terminal benefits i.e. credit balance including leave encashment, AFPP Fund, DLI Scheme, AGI Insurance and AGI maturity, ACWF, AWWA, RAA and death cum retirement gratuity. In addition to terminal benefits, applicant was granted Rs. 30,000/- and Rs. 70,000/- as one time grant from Army Central Welfare Fund for physical casualties. As per entitlement, applicant is getting Special family pension @ Rs. 8,496/- per month for life with effect from 12.08.2009 which has been revised from time to time. Applicant submitted an application dated 19.11.2018 for grant of Ex Gratia relief from J&K Government stating that her husband was expired on 11.08.2009 while posted to 11 Rashtriya Rifles at Jammu and Kashmir. Reply was given to her that she is not entitled Ex Gratia as

her husband died while he was on leave. All dues as per entitlement have been paid to the applicant and nothing is pending. Learned counsel for the respondents prayed that instant O.A. lacks merit and substance and is liable to be dismissed.

6. We have heard learned counsel for the parties and have also perused the record.

7. The basic issue to determine is whether the applicant fulfils the requirement for the grant of ex gratia compensation?

8. After having heard the submissions of learned counsel of both sides and perusal of record, we find that every person granted Special Family Pension is not entitled for ex gratia compensation. The main condition for grant of ex gratia compensation is that death of the employee concerned should have occurred in the actual performance of bona fide duties. Ex Gratia compensation is granted to families of Defence Service personnel who die in harness i.e. death occurring due to accidents in the course of performance of duties, death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti social element and death occurring during enemy action in international war or border area and action against militants, terrorists, extremists etc. Initially, by a policy decision of the Govt of India, Min of Def dated

04.06.2010, ex gratia compensation was provided to the next of kin in cases of death. This was extended on 26.12.2011 to personnel who are disabled or incapacitated on account of causes attributable to or aggravated by military service.

9. The applicant has claimed Ex Gratia in terms of Govt of India, Min of Defence letter dated 02.11.2016. Relevant portion of the letter is reproduced as under:-

**Subject: Ex Gratia lump sum compensation-  
Recommendations of the Seventh Central Pay Commission.**

Sir,

*I am directed to refer to this Min's letter No 20(i)/98/D(Pay/Services) dated 22.09.1998 as amended vide letter of even number dated 12.04.1999, 03.08.1999, 19.05.2000, 21.10.2008 and letter No 20 (5)/2009/D(Pay/Services) dated 04.06.2010 on the above subject and to say that in pursuance of Government's decision on the recommendations of the Seventy Central Pay Commission, the existing rate of ex gratia lump sum compensation to the next of kin of the deceased Defence Forces Personnel is revised as follows:-*

<b>S.No</b>	<b>Circumstances</b>	<b>Rates (in Rs.)</b>
(a)	<i>Death occurring due to accidents in course of performance of duties.</i>	25 lakhs
(b)	<i>Death in the course of performance of duties attributed to acts of violence terrorists, anti social elements etc.</i>	25 lakhs.
(c)	<i>Death occurring in border skirmishes and action against militants, terrorists, extremists, sea pirates.</i>	35 lakhs
(d)	<i>Death occurring while on duty in the specified high altitude, inaccessible border posts, on account of natural disasters, extreme weather conditions.</i>	35 lakhs
(e)	<i>Death occurring during enemy action in was or such was like engagements, which are specifically notified by</i>	45 lakhs

	<i>Ministry of Defence and death occurring during evacuation of Indian Nationals from a war torn zone in foreign country.</i>	
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10. In the instant case, applicant is not covered under this policy letter as husband of the applicant died while on leave. Govt of India has issued various policy letters from time to time for grant of Ex Gratia payment. Case of the applicant for grant of Ex Gratia is not covered under any of the policy letters. As per policy, all the dues have been paid to the applicant and nothing is due as per existing rules. We also find that rulings relied upon by the applicant being either based on different facts or overruled are of no help to her.

11. In the result, we hold that the claim of the applicant for grant of ex gratia compensation has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

12. No order as to cost.

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

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: 04 February, 2022  
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