

E- Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 90 of 2021

Monday, this the 31st day of January, 2022

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

Mrs Mukta Tiwari, Widow of Late Wg Cdr RK Tiwari (24973-N) Adm of 45 Wg, AF having residence at House No 108, Sector No 25, Indira Nagar, Lucknow.

..... Applicant

Counsel for the: **Shri Sudeep Kumar,
Applicant Shri AK Pandey and
 Ms. Radhika Verma**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Directorate of Air Veterans, Air Head Quarters, Subroto Park, New Delhi.
3. Joint Controller of Defence Accounts, New Delhi.
4. The Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Counsel for the Respondents : **Shri Ashish Kumar 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 quash the order/ letter dated May 24, 2017, bearing No AIR HQ/99797/364/FP/O/DAV-1A, and order dated January 16, 2019 bearing No AIR HQ/99797/3654/FP/O/DAV-1A passed by Respondent No 2 by which the claim of the applicant for grant of special family pension has been rejected on the ground that the death of the husband of the applicant was neither attributable nor aggravated to service.*
- (B) To issue appropriate order or direction commanding the respondents to grant benefit of Special Family Pension Scheme to the applicant as per Regulation 74 of Pension Regulations for the Air Force, 1961 with due arrears at the minimum rate of SFP specified as per the 7th CPC granted at 60% of reckonable emoluments plus admissible Dearness Relief, with effect from the date following next date of death of the husband of applicant with interest.*
- (C) Any other order or direction which this Hon’ble Tribunal may deem just and proper in the circumstances of the case be also passed in favour of the applicant.*
- (D) To direct the respondents to pay the cost of this application.”*

2. Rejoinder affidavit filed by the applicant is taken on record.

3. Facts giving rise to Original Application in brief are that husband of applicant Late Wg Cdr RK Tiwari was commissioned in Indian Air Force in the year 1997. He was appointed to the post of Security Officer at Air Force Station Sirsa on 23 May 2016. In the morning of 26.10.2016 he committed suicide. Court of Inquiry was held and his death was considered as attributable to military service. Applicant is getting enhanced family pension after death of her husband. Applicant prayed for grant of Special Family Pension as death of husband took place while he was on duty and death of the husband of the applicant was considered as attributable to military service. Her prayer for grant of Special Family Pension was rejected by the respondents vide letter dated 21.11.2017. Being aggrieved, the applicant has filed this Original Application for grant of Special Family Pension.

4. Learned counsel for the applicant submitted that husband of the applicant was appointed to the post of Security Officer at Air Force Station Sirsa on 23.5.2016 and died on 26.10.2016. A day prior to death of husband of the applicant a firing practice was carried out in the presence of Air Officer Commanding in Chief (AOC in C), Western Air Command (WAC) Namely Air Marshal Shirish Baban Deo. All the officers as well as Quick Reaction Team (QRT) were undergoing range firing using the INSAS Rifle and a

pistol. While overall results of the officers present at the firing range was not up to the mark, the AOC in C, WAC expressed his extreme dissatisfaction and annoyed with the performance of Security Officer Late Wg Cdr RK Tiwari and he directed Air Comde A Vohra to relieve the Security Officer off his duties for a week and resume charge only once he has improved his firing skills by achieving a desired standard as the Security Officer has to be a role model for all QRT personnel and the security staff and this action was to be completed by the next day i.e. on 26.10.2016. After range firing the Security Officer Late Wg Cdr RK Tiwari was upset and depressed by the humiliation caused to him by the AOC in C. On the morning of 26.10.2016 around 0500 hours, the Late Wg Cdr RK Tiwari/ Security Officer was last seen taking rounds of the station range area as per the duty chart assigned to him. On 26.10.2016 at 0815 hrs officers noticed a service vehicle (Maruti Gypsy) parked across the road with Wg Cdr RK Tiwari in driver's seat of that vehicle in combat dress and showing no signs of any movement. Officers proceeded near the parked vehicle and find that Wg Cdr RK Tiwari was dead. A Court of Inquiry was held and it was established that officer has committed suicide. The main contributing factor into the suicide was high stress levels owing to work pressure, security work and under performance in range firing combined with typical service

conditions. The death of late Wg Cdr RK Tiwari was found attributable to service as he was seen performing his duty on the morning of 26.10.2016 and at the time of death he was found in uniform in the service vehicle provided to him.

5. Learned counsel for the applicant further submitted that husband of the applicant was manhandled and humiliated by AOC in C, WAC, created such circumstances that eventually lead the officer to commit suicide. Applicant is getting enhanced family pension. Her claim for grant of Special Family Pension was rejected vide letter dated 24.05.2017 in spite of death of husband of the applicant was found as attributable to Air Force service. Her appeal for grant of Special Family Pension was also rejected vide letter dated 16.01.2019. Learned counsel for the applicant pleaded that direction be issued to respondents to grant Special Family Pension to the applicant from the date of death of her husband.

6. Learned counsel for the applicant has placed reliance on the judgment passed by High Court of Punjab and Haryana in ***Civil Writ Petition No 10061 of 1998, Mandeep Kaur Vs Union of India***, decided on 19.12.2000 and Armed Forces Tribunal, Principal Bench, New Delhi order passed in O.A. No 788 of 2015 with M.A.

No 815 of 2015, Yasoda Devi Vs Union of India & Ors decided on 01.07.2019 in support of his contention.

7. Per contra, learned counsel for the respondents submitted that Late Wg Cdr RK Tiwari was found dead in his service vehicle (Gypsy) with firearm injury on his forehead and his pistol lying on his lap on 26.10.2016 while he was on the posted strength of 45 Wg Air Force. As per postmortem report cause of death is fire arm injury to brain. Court of Inquiry opined that Wg Cdr RK Tiwari committed suicide by shooting himself by service pistol and his death was considered attributable to service because he was on duty, he had carried out early morning guard check till 0515 hrs and at the time of death he was found in uniform in the service vehicle provided to him. The officer committed suicide due to work pressure, security work environment and under performance in range firing combined with typical military service conditions. As per para 10 (a) (ii) of entitlement Rules i.e. Appendix to MoD letter dated 18.01.2010 which states that "in cases of self inflicted injuries while on duty attributability shall not be conceded unless it is established that service factors were responsible for such action". The applicant is getting enhanced rate of family pension as per policy. Her claim for grant of special family pension was considered but since husband of the applicant died due to suicide, hence her claim was rejected and

she was granted enhanced rate of family pension. Learned counsel for the respondents submitted that in view of subject case being against existing Govt policy, O.A. does not have any substance and merit in the principles of natural justice, hence the same deserves to be dismissed.

8. We have heard learned counsel for the parties and have also perused the documents available on record.

9. Having given careful consideration to the arguments made by the counsels from both sides, we find that the primary issue before us is whether the next of kin (wife) of an officer who committed suicide due to heavy work pressure can be entitled to Special Family Pension by granting that the death was attributable to military service.

10. Para 74 of the Pension Regulations for the Air Force 1961, deals with the Special Family Pension to be granted to the widow of the deceased officer in case of death of Armed Forces Personnel due to causes which are accepted as attributable to or aggravated by military service. Regulation 74 of Pension Regulations for the Air Force, 1961 are reproduced as under:-

Special family pensionary awards—when admissible

74. A special family pension to the widow of an officer and special children's allowance to his legitimate children under 18 years of age, or dependants pension to his parents of brothers/sisters, may be granted if his death was due to or hastened by either a wound, injury or disease which was attributable to air force service, or the aggravation by air force service of a wound, injury or disease which existed before or arose during air force service, provided that—

(a) In the event of death after retirement, the officer did not retire voluntarily and provided that

(b) In the case of pension for a widow and allowance for a child—

(i) the officer married before joining the service or while on the active list and before he received the wound or injury or before he was removed from duty on account of the disease;

(ii) when death is due to disease, the officer survived his marriage by at least a year, unless it can be shown that he was manifestly in good health at the time of his marriage: and

(iii) subject to any exception which the President may approve in a particular case under regulation 79 the widow was not separated from her husband at the time of death;

11. A gainful reading of the provisions contained in Rule 6 of Entitlement Rules for the Casualty Pensionary Awards, 2008, it is established that for the death of armed forces personnel to be attributable to military services there must be a causal connection between death and military service for the attributability or aggravation to be conceded. In the instant case officer committed suicide due to heavy work pressure, security

work and under performance at the firing range. Hence death can be considered as attributable to military service.

12. On careful reading of Rule 10 of the Entitlement Rules for the Casualty Pensionary Awards, 2008, it is established that a person subject to the disciplinary code of the armed forces is treated to be 'on duty' while performing any one the functions mentioned in Rule 9 of the Entitlement Rules which elaborate the scope and purport of the term 'duty'. For award of special family pension a causal connection between death and military service has to be established. Perusal of Court of Inquiry report reveals that nexus between the death and military service has been established as the death of Late Wg Cdr RK Tiwari was due to high stress levels, work pressure and under performance in range firing.

13. After having heard the submissions of learned counsel of both sides we find that certain facts are admitted to both the parties. Late Wg Cdr RK Tiwari was a bright and upcoming officer who carried out his duties at various places of posting in a professional manner. Officer attended Security courses and got first rank in APM course and in ASICO course. He was APM in Jorhat where he got appreciation letter from PM Air and also got AOC in C commendation Bar. Officer was also posted as Security Officer at

Bareilly where his performance was appreciated. Husband of the applicant was never identified as a probable suicide case by any superior authority or peer group. The deceased officer was not under any kind of psychiatric care/illness. He was also not under any kind of medical treatment. He was absolutely hale and hearty. One day prior to death, the officer was in a disturbed state of mind due to high stress levels. Despite a consolation and motivation chat with officers, he did not share his anxiety with anyone else. Mess Secretary confirmed that no record of alcohol consumption in Officer Mess Bar records. The officer was not under influence of alcohol at the time of death. The officer had done meticulous financial planning for the future of his family and children. The superiors, colleagues and subordinates never observed any signs of depression in behavior of officer since his posting to the station. Late Wg Cdr RK Tiwari was a non drinker and non smoker. He was performing duties of security officer as primary duty and O i/c DSC as secondary duty. The officer was extremely involved in his work and used to work for long hours every day. After death of Late Wg Cdr RK Tiwari applicant was granted enhanced rate of family pension. The respondents denied Special Family Pension to the applicant due to reason that death of husband of the applicant was due to suicide. This question has been considered by the Hon'ble High Courts and

the Hon'ble Apex Court and it has been held that for grant of special family pension, death should be attributable to military service.

14. In the instant case a Court of Inquiry was constituted and the said Court of Inquiry gave the finding that the death of the husband of the applicant is attributable to military service and this finding cannot be disturbed by the PCDA because there was no basis for him to say that he did not agree with the findings of the Court of Inquiry. In the Court of Inquiry there is categorical finding with regard to the death of officer that the death was attributable to the military service and if this finding has been recorded by a Court of Inquiry which considered the entire evidence after examining number of witnesses, then the applicant cannot be deprived from grant of Special Family Pension on the plea that death was due to suicide. Attention was invited to a judgment dated 19.08.1996 passed in **CWP No 1933 of 1995, Guj Raj V. Union of India** wherein finding of Court of Inquiry was upheld by the Hon'ble Court and Union of India challenged this judgment in LPA No 5 of 1997 and the LPA was dismissed. Thus the consistent view of the law is that much weightage should be given to the finding of the Court of Inquiry and there is valid reason behind it because the Court of Inquiry gives a finding after examining the requisite evidence.

It applies its mind to the entire evidence and circumstances of the case and one individual sitting in the office cannot lightly disturb the finding of the Court of Inquiry in which cogent and convincing documents are produced.

15. We have considered the applicant's case and we find that death of husband of the applicant could have been avoided if any senior competent officer would have taken step to console Late Wg Cdr RK Tiwari.

16. In the instant case, it has been observed that there was shortage of manpower in Security Section at Air Force Station Sirsa. Officer was assigned security task by Air Officer Commanding for which he asked more manpower to carry out the job. He was directed to implement the task with existing manpower. The officer was at loss to find ways on how to get work done due to persistent shortage of manpower at the station. Humiliation by seniors in front of subordinates, among other reasons, may have been a tipping point for him leading to death of Late Wg Cdr RK Tiwari. Undue work pressure created a situation where Late Wg Cdr RK Tiwari was perhaps worried, over worked and tensed. The officer was publicly humiliated resulting in him feeling low, disappointed and ashamed of this situation and he may have wondered how he is going to face his

fellow officers and subordinates in future. This may have created a situation wherein the officer took the unfortunate step. Public humiliation and man handling, work overload and continuous harassment was perhaps a reason for death of the officer. Death of the husband of the applicant was considered as attributable to military service being connected with his military duties, hence applicant is entitled to special family pension.

17. In the result, the O.A. bears merit and is **allowed**. Impugned orders passed by the respondents rejecting the claim for grant of Special Family Pension to the applicant are quashed. Respondents are directed to grant Special Family Pension to the applicant from the date of death of her husband Late Wg Cdr RK Tiwari according to law and rules. Applicant is already getting enhance rate of family pension. However, applicant will be entitled to arrears only for a period of three years prior to the date of filing the O.A. i.e. 28.01.2021. Applicant will not be granted other consequential benefits. Respondents to pay arrears within four months, otherwise interest @ 8% per annum will be attracted.

18. No order as to cost.

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

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

Dated: 31 January, 2022
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