

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 202 of 2020****Thursday, this the 26th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No TJ-4446-M, Smt Mina Singh, W/o Late Sub. Ram Singh, R/o Village-Pilkhuwan Post-Kharihani Dist-Azamgarh, Pin-276204.

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

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi.
3. Officer-in-charge, Records Garhwal Rifles, Pin-900400 C/o 56 APO.
4. The Principal Controller of Defence Account (Pension), Draupadighat, Allahabad-211014.

... RespondentsLd. Counsel for the **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Central Govt Standing Counsel**ORDER (Oral)**

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:-

(a) To call for service record and to see whether calculation of length of service (09 years, 06 months and 18 days) is correct and grant Family Pension w.e.f. 11.12.2005, if entitled.

(b) To grant Ex-Gratia grant of Rs 10,00,000.00 as per order Hon'ble Apex in the case of Santosh Devi.

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

2. Brief facts of the case giving rise to this application are that the husband of applicant was enrolled in the Territorial Army (121 INF BN (TA) Garhwal Rifle on 22.04.1985 and died on 18.12.2005 at Command Hospital (EC) due to **'HEPATIC ENCEPHALOPATHY and ALCOHOLIC LIVER DISEASE'** while in disembodied state prior to completion of 15 years of service as embodied state. After demise of deceased soldier, his wife was granted Death Cum Retirement Gratuity (DCRG) amounting to Rs 1,58,556.00. Applicant preferred an application dated 05.11.2017 for grant of Ordinary Family Pension which was rejected vide order dated 30.11.2017 stating therein that applicant's husband's death being in disembodied state, she is not entitled to family pension. This O.A. has been filed for grant of Ordinary Family Pension and Ex-Gratia lump-sum compensation of Rs 10 Lac.

3. Ld. Counsel for the applicant pleaded that applicant's husband had completed 20 years of service at the time of death but unfortunately his embodied service was less than 15 years when he died on 18.12.2005. His further submission is that the deceased soldier was holding the rank of Subedar but he could complete only 9 years, 06 months and 18 days

as embodied service. He pleaded that husband of the applicant died during duty period, hence, the applicant is entitled to Ordinary Family Pension and Ex-Gratia lump-sum compensation of Rs 10 lakh.

4. Per contra, the respondents contended that husband of the applicant has completed total embodied service of 09 years and two hundred one days only vide Records Garhwal Rifles letter dated 24.04.2006 i.e. less than 15 years of service which does not entitle family to receive Ordinary Family Pension after death of her husband. His further submission is that as per prevalent rules family pension is not admissible to wife of deceased soldier when he dies in disembodied state. Respondents' learned counsel further contended that only DCRG is applicable to family of the deceased soldier which has already been paid to her vide PPO No. F/NA/374/2007 dated 15.02.2007. His further averment is that applicant is not entitled to Ordinary Family Pension, but admitted in para 4 of Counter Affidavit that applicant is entitled to grant lump-sum compensation in terms of Hon'ble Apex Court judgment in the case of Santosh Devi vs Union of India delivered on 06.05.2016 in Civil Appeal No 4853 of 2016.

5. After hearing both the sides and perusal of records a question cropped up whether wife of a deceased T.A. personnel who died during disembodied state, is entitled to Ordinary Family Pension and Ex-Gratia compensation?

6. It is not disputed that applicant's husband died during disembodied state before completion of 15 years embodied service; therefore, applicant seems to be not entitled to Ordinary Family Pension in terms of

Rule 192 of Pension Regulations for the Army, 2008 (Part-I). Now coming to second limb of arguments advanced by learned counsel for the applicant-whether she is entitled to Ex-Gratia lump-sum compensation?

7. On this issue, submission of Ld. Counsel for the applicant is that in view of judgment rendered in Civil Appeal No 4853 of 2016 decided on 06.05.2016, their Lordships of the Hon'ble Apex Court have held in the case of ***Santosh Devi Vs Union of India and Others***, that wife of deceased soldier who dies in disembodied state (prior to completion of 15 years of service in embodied state) is not entitled to Ordinary Family Pension. The Hon'ble Apex Court, however, granted Ex-Gratia lump-sum grant of Rs 10 lakhs to family of deceased soldier. Operative portion of the aforesaid judgment is as under:-

“x x x x x x x x x x For quite sometime, the appellant has been pursuing the litigation seeking family pension. Considering the peculiar facts and circumstances of the case and the plight of the appellant, in the interest of justice and in exercise of our power under Article 142 of the Constitution of India, we deem it appropriate to award ex-gratia grant of rupees ten lakhs payable to the applicant.”

8. From the aforesaid judgment, applicant is not entitled to Ordinary Family Pension but she is entitled to Ex-Gratia lump-sum compensation of Rs 10 lakhs, which she is litigating for quite a long time.

9. In view of the above, applicant is entitled to Ex-Gratia lump-sum grant of Rs 10 lakhs on demise of her husband during disembodied state.

Respondents are directed to pay Rs 10 lakhs to the applicant within a period of three months from today. Default will invite interest @ 8% p.a.

10. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 26 July 2021

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(Justice Umesh Chandra Srivastava)
Member (J)