

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 171 of 2020**

Monday, this the 19th day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)

Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Suman Devi, W/O No 13693890M Late L/Nk Ramesh Chandra, R/O H No C-15, Near RTO, Yamuna Puram, Bulandshahr, Pin-203001 (U.P.).

.... Applicant

Ld. Counsel for the: **Shri KK Misra, Advocate**
Applicant

Versus

1. Union of India, through its Secretary, Min of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge, Records, Brigade of Guards, Kamptee, Pin-441001.
4. Commanding Officer, 3 Guards (1 Raj Rif), C/O 56 APO.
5. PCDA (P), Allahabad.

... Respondents

Ld. Counsel for the: **Shri Ashish Kumar Singh, Advocate**
Respondents Central Govt Counsel.

ORDER (Oral)

1. Applicant's husband No 13693890M L/Nk Ramesh Chandra was enrolled in the Army on 01.02.1994. On 16.09.2000 he took part in unit Battle Physical Efficient Test (BPET). It is alleged that in the evening condition of applicant's husband deteriorated suddenly and his wife noticed blood coming out of his mouth. He was rushed to Military Hospital, Jodhpur where at about 1545 hrs he was declared dead and cause of death was regarded as organochloride insecticide poisoning. Court of Inquiry (C of I) conducted to find out cause of death gave opinion that Ramesh Chandra died due to consuming insecticide and his death was not regarded attributable to military service. The Brigade Commander (Bde Cdr) and higher officers in chain of Command also concurred the same. Applicant is in receipt of ordinary family pension. Special family pension claim was rejected vide letter dated 30.08.2001. Thereafter, first and second appeals were rejected vide orders dated 04.06.2019 and 30.01.2020 respectively. Aggrieved by non grant of Special Family Pension she has filed this O.A. for grant of Special Family Pension with the following prayers:-

- (i) to quash CDA (P) Allahabad letter No G4/7/2001/7063/IV dt 31 Aug 2001, Brigade of Guards, Kamptee letter No

13693890/125/F-Pen dt 20 Sep 2001, AG's Branch letter No B/38046/41/2018/AG/PS-4 (Imp-II) dt 04 June 2019 and IHQ, MoD (Army) letter No B/38045A/484/2019/AG/PS-4 (2nd Appeal) dated 30 Jan 2020, (Annexure A-5, A-6, A-8 and A-9) respectively to this O.A.

- (ii) to direct the respondents to declare the death of the applicant's husband as attributed to military service.
- (iii) to direct the respondents to grant Special Family Pension to the applicant from the date of her husband's death, i.e. 16 Sep 2000.
- (iv) to direct the respondents to pay the arrears of pension to the applicant with effect from the date of her husband's death.
- (v) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.
- (vi) Cost of the case may be awarded in favour of the applicant.

2. Learned counsel for the applicant submitted that husband of applicant died on duty on 16.09.2000. It was averred that L/Nk Ramesh Chandra took active part in unit BPET cum cross country test in the Battalion (Bn) in which he was declared 'Outstanding'. His further submission is that at about 1245 hrs he felt exhausted as blood was coming out of his mouth. He was admitted in hospital where at about 1545 hrs during medical examination and treatment suddenly he died. Applicant's learned counsel further submitted that on 17.09.2000 post mortem in respect of the deceased soldier was carried out in Mahatma Gandhi Hospital, Jodhpur, according to which it was not established that he died due to consumption of

insecticide as alleged in the C of I. He further submitted that applicant was fully fit in all respects at the time of enrolment and the disease/disability which caused death of applicant's husband is due to service conditions. Further submission of learned counsel for the applicant is that since applicant's husband was on duty at the time of death, his death should be attributable to military service and denial of Special Family Pension to deceased soldier's wife is arbitrary in nature.

3. On the other hand, learned counsel for the respondents submitted that since C of I conducted after death of applicant's husband has regarded his death as not attributable to military service therefore, the Brigade Commander vide his direction dated 06.05.2001 has not conceded his death as attributable to military service. He further submitted that in view of denial of attributability vide certificate dated 06.05.2001 disease/disability in respect of the deceased soldier is neither attributable to nor aggravated by military service. He pleaded for dismissal of O.A.

4. We have heard learned counsel for the parties and perused the records.

5. Admittedly, the applicant's husband was enrolled in Indian Army on 01.02.1994. During course of service on 16.09.2000 he took part in unit BPET and was declared outstanding amongst

others in unit. At about 1245 hrs he felt exhausted and was rushed to the Military Hospital, Jodhpur where at about 1545 hrs, despite providing medical treatment, he was declared dead. His post mortem was carried out in Civil Hospital, Jodhpur on 17.09.2000.

6. Before proceeding further, we would like to determine whether applicant's husband was on duty when he suddenly died on 16.09.2000 after feeling exhausted. We observe that condition of applicant's husband deteriorated after conduct of BPET which he completed successfully and stood first in unit test. Therefore, his fatal disease with which he died may be regarded as attributable to military service as he was on duty when unfortunate sudden incident occurred. With regard to definition of "duty" we rely on Appendix II of Clause 12 of Entitlement Rules for Casualty Pensionary Award which defines the word duty, which for convenience sake is reproduced as under:

"DUTY: 12. A person subject to the disciplinary code of the Armed Forces is on "duty":- (a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him.

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

(c) During the period of participation in recreation and other unit activities organised or permitted by Service Authorities and during the period of travelling in a body or singly by a prescribed or organised route.

Note:1

(a) Personnel of the Armed Forces participating in

- (i) *Local/national / international sports tournaments as member of service teams, or,*
- (ii) *Mountaineering expeditions / gliding organised by service authorities, with the approval of Service Hqrs will be deemed to be "on duty" for purposes of these rules.*

(b) Personnel of the Armed Forces participating in the above named sports tournaments or in privately organised mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be „on duty for purposes of these rules, even though prior permission of the competent service authorities may have been obtained by them.

(c) Injuries sustained by the personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organised by, or disability arising from such injuries, will continue to be regarded as having occurred while „on duty for purposes of these rules.

Note: 2

The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorised professional courses or exercises for the Defence Services for the purpose of the grant of disability family pension on account of disability/death sustained during the courses.

(d) When proceeding from his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher, on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for the journey.

(e) When journeying by a reasonable route from one's quarter to and back from the appointed place of duty, under organised arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available.

(f) An accident which occurs when a man is not strictly on duty as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Thus for instance, where a person is killed or injured by another party by reason of belonging

to the Armed Forces, he shall be deemed „on duty“ at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act.”

7. Thus, keeping in view the aforesaid ruling and the fact that the deceased soldier's condition worsened after conduct of BPET test, applicant's husband seems to be on duty.

8. We have scrutinized the post mortem report dated 17.09.2000 and find that nowhere it has been mentioned therein that Ramesh Chandra (applicant's husband) died on account of consuming organochloride insecticide poison. Therefore, submission made by learned counsel for the respondents that Ramesh Chandra died due to consuming organochloride insecticide poison is not sustainable. Submission of learned counsel for the applicant that applicant's husband died due to physical exertion of BPET held on 16.09.2000 seems to have weightage on the ground that condition of applicant's husband deteriorated after conclusion of BPET on 16.09.2000.

9. Submission of learned counsel for the respondents with regard to direction issued by Brigade Commander dated 06.05.2001 that applicant died after consuming of organochloride insecticide poison is not sustainable as Adjutant, 3 Guards had issued letter dated 21.11.2000 to Smt Dharmvati Devi, Village

Pradhan intimating him that applicant's husband did not consume organochloride insecticide poison as is being said but he died suddenly. Therefore, submission made by learned counsel for the applicant that applicant's husband did not consume organochloride insecticide poison, that caused his death, has force as his submission is fortified by letter dated 21.11.2000. For convenience sake the aforesaid letter is reproduced as under:-

ए/13693890/सी एफ

3 गार्ड्स (1 राज राई)
मार्फत 56 एपीओ
21 नवंबर 2000

श्रीमती धर्मवती देवी (ग्राम सरपंच) (प्रधान)
ग्राम - ड्रावड़
जिल्ला-बुलंदशहर (उ०प्र०)

सेवारत सैनिक की मृत्यु के बारे में जानकारी

1. आपको सूचित किया जाता है कि नं. 13693890एम लांस नायक रमेश चंद्र शर्मा की मृत्यु दिनांक 16 सितंबर 2000 को 1545 बजे सैनिक अस्पताल जोधपुर में अचानक हुई है। मेडिकल रिपोर्ट के अनुसार अचानक मृत्यु सावित हुई है, जहर बगैरह से नहीं हुई है। यह गलत अफवाह है कि उसकी मृत्यु जहर से हुई है।
2. आपसे अनुरोध है कि आपके पास जो हमारा व्यक्ति सरकारी कागज लेकर आए, उनपर हस्ताक्षर करने की कृपा करें। तथा ग्राम वासियों को उक्त अफवाह के बारे में अवगत कराएं कि यह पूर्णतया असत्य है।

भवदीय,

Sd/- x x x x x x x
Major
Adjutant
3 Guards (1 Raj Rif)

10. In this case we would like to mention that none of the parties have produced copy of C of I report including its opinion and findings to establish cause of death. In the instant case applicant is in receipt of Ordinary Family Pension but she is entitled to Special Family Pension on account of death of applicant's husband while on duty.

11. We are of the view that death of applicant's husband is attributable to military service as it occurred while he was on bonafide military duty.

12. In view of the above, we **allow** this O.A. and direct the respondents to release Special Family Pension to applicant w.e.f. date of death of her husband. Difference of arrears may be worked out and paid to applicant within three months.

13. Let entire amount be paid to the applicant within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% p.a.

14. No order as to cost.

15. Pending applications, if any, are disposed off accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 19.07.2021
rathore