

**E-Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 355 of 2020**

Tuesday, this the 06<sup>th</sup> day of July, 2021

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

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

Smt Sadhana Sharma widow of Late No 13986870P Sepoy Jitendra Kumar Sharma, Resident of village-Naugaon No 1, Post-Chhirahai, Tehsil-Ramnagar, District-Satna (MP)-495001.

.... **Applicant**

Ld. Counsel for the: **Shri R Chandra, Advocate**  
Applicant

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office-New Delhi-1.
3. The Officer-in-Charge, Army Medical Corps Records, Lucknow (UP).
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

... **Respondents**

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

1. Applicant's husband No. 13986870P Sepoy Jitendra Kumar Sharma died due to a road traffic accident during course of duty. After his death, the applicant was granted ordinary family pension vide PPO No. 185201900491. She had filed O.A. No. 116 of 2017 to this Tribunal for grant of special family pension which was allowed vide order dated 07.02.2018. Now she has filed this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

*(i) The Hon'ble Tribunal may be pleased to set aside the order dated 14.11.2019 (Annexure No A-1).*

*(ii) The Hon'ble Tribunal may be pleased to direct the respondents to grant Ex Gratia Amount to the applicant as per existing policy along with its arrears with interest at the rate of 18 percent per annum.*

*(iii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Admittedly the applicant's husband was enrolled in Indian Army on 27.08.1993. During course of service he met with a road accident in the night of 18.09.2003 and succumbed to injuries on 19.09.2003 in Govt Medical College, Jabalpur.

3. The Court of Inquiry (C of I) dated 20.11.2003 was conducted to investigate the circumstances under which husband of the applicant met with an accident on 18.09.2003 resulting into his death on 19.09.2003. According to remarks of Commandant, Military Hospital, Jabalpur dated 27.12.2003 on opinion and findings of the aforesaid C of I, death of the deceased soldier is regarded as attributable to military service in peace. After death, all retiral dues were released as pleaded in para 7 of the counter affidavit.

4. So far as payment of ex-gratia lump sum compensation is concerned it was processed to AMC Records but the same was returned back pointing out towards policy dated 22.09.1998. It is noted that, AMC Records, in view of policy dated 22.09.1998 (supra), has expressed their views as under:-

*“It is intimated that according to court of inquiry, your husband No 13986870 Sep Jitendra Kumar Sharma (late) died on 19 Sep 2003 due to road traffic accident while riding a motor cycle on night of 18 Sep 2003 at about 2230h while going to his uncle’s home near Govt Medical College, Jabalpur. As per Govt of India, Min of Defence letter No 20(I)/98/D(Pay/Services) dated 22 Sep 1998. Death occurred due to accidents in the course of performing of duties is applicable for grant of ex-gratia compensation. However, death of your husband is not covered under such nature i.e. accident during course of performance of duty.”*

5. It may be noted that earlier the applicant had filed O.A. No. 116 of 2017 for grant of special family pension which was decided by this Tribunal vide order dated 07.02.2018 directing the respondents to grant special family pension to applicant within a period of four months. The applicant is in receipt of special family pension.

6. A question cropped up whether denial of ex-gratia lump sum compensation is correct or not? The policy letter dated 22.09.1998 relied by AMC Records was subject matter of consideration in O.A. No. 177 of 2013, **Smt Prarthna Singh vs Union of India & Ors**, decided on 28.04.2016.

After considering the policy (supra) this Tribunal has observed as under:-

*“5. For the purpose of payment of special family pension an adjudication board was constituted to assess the attributability and aggravation factor based on the court of inquiry proceedings and the death of the deceased. The adjudication board recorded a finding that the death was attributable to military service. Accordingly claim for special family pension was processed and sent to Principal Controller*

*of Defence Accounts (Pensions), Allahabad who notified the same with effect from 22.11.2010 till widowhood”.*

7. In the case of **Smt Prartha Singh** (supra) this Tribunal has also considered Entitlement Rules for Casualty Pensionary Awards to the Armed Force personnel, 2008. For convenience sake paras 8 and 9 of judgment in **Smt Prarthana Singh's** case (supra) are reproduced as under:-

*“8. The Government of India Circular letter dated 18.01.2009 contains ‘Entitlement Rules for Casualty Pensionary Awards to the Armed Force Personnel, 2008’ (in short, the Rules). Rule 12 contains the ‘designated competent authority’ to take decision in injury cases/re-assessment of disability. Rule 13 deals with ‘death cases’. For convenience sake, Rules 12 and 13 of the Rules are reproduced as under:-*

*“12. Competent Authorities;*

*(a) Attributability/aggravation:  
(i) Injury Cases*

*Decision regarding attributability/aggravation in respect of injury cases in invalidment/retirement or discharge would be taken by the Service HQrs. In case of officers and OIC Records in case of PBOR, for the purpose of casualty pensionary awards.*

*(ii) The decision regarding attributability/aggravation in respect of discharge cases shall be taken by the Service HQrs in case of officers and OIC Records in case of PBOR on the basis of the findings of the RMB/IMB as approved by the next higher medical authority.*

*(b) Assessment*

*(i) The assessment with regard to percentage of disability in both injury and disease cases as recommended by the invaliding/release medical board as approved by the next higher medical authority shall be treated as final for life unless the individual himself requests for a review, except in the cases of disability/disabilities which are not of a permanent nature.*

(ii) Where disablement is due to more than one disability, a composite assessment of the degree of disablement shall be made by reference to the combined effect of all such disabilities in addition to separate assessment for each disability. In case of overlapping disabilities, the composite assessment may not be the sum of individual disabilities.

(c) Re-Assessment of Disability

These shall be no periodical review by Resurvey Medical Boards for re-assessment of disabilities except for disabilities which are not of a permanent nature, for which there shall be only one re-assessment of the percentage by a Reassessment Medical Board. The percentage of disability assessed/recommended by the Reassessment Medical Board shall be final and for life unless the individual himself asks for a review.

13. Death Cases

(i) Due to injury-Decision regarding attributability/aggravation in respect death in injury cases for grant of special family pension shall be taken by Service HQrs in case of officers/OIC Records in case of PBOR.

(ii) Due to disease-Decision regarding attributability/aggravation shall be taken by Services HQrs/OIC Records, as the case may be, on the basis of medical opinion of DGAFMS or such medical authorities as prescribed by him.

Note: in case of battle casualty, the awards for liberalized family pension shall be decided by the Pension Sanctioning Authority based on the casualty report published by the authorities concerned.

9. The aforesaid Rules have been supplemented by order dated 30.06.2010 enhancing the amount of ex-gratia lump sum compensation. Another circular dated 16.04.1996 issued by the Government of India deals with the claim for grant of ex-gratia award in the event of death or disability. The amount has been enhanced by the subsequent one. Attention has not been invited to any

*Circular Order issued by the Government of India or Ministry of Defence where PCDA (P) has been conferred power to reject decision taken by the competent authority for payment of ex-gratia lump sum compensation. In the absence of any such authority to reject the claim, PCDA (P) may at the most remand back the matter for re-consideration pointing out the illegalities, if any, but in case the competent authority passes any order for payment of amount in lieu of disability or death as ex-gratia lump sum compensation, then it shall be binding on the PCDA (P). Denial without any authority enhances mental pain and agony upon the dependents of the deceased armed forces personnel and may also result with corrupt practice to grease the palm of baboos even for genuine and lawful payments. It may be taken notice that sometimes people are harassed in government offices even for genuine and lawful cause only to fetch bribe and grease the palm and on being satisfied, payments are made without any if and but. The whole system seems to suffer from such menace on account of lack of penal provisions and accountability.”*

8. The facts of the present case as borne out of the record show that the applicant's husband met with an accident while driving motor cycle alongwith pillion rider from his residential quarter to some other place while on duty in military area. The remarks of Commandant, Military Hospital, Jabalpur on opinion and findings of Court of Inquiry also show that the injury caused was attributable to military service. For convenience sake his opinion on the findings of the Court of Inquiry is reproduced as under:-

*“I fully agree with the findings and opinion of the Court of Inquiry regarding the accidental death of late Sep/Dvr JK Sharma on 19 Sep 2003.*

*No one to be blamed and his death is attributable to military service.*

*I recommend all the financial benefit to be paid to his next of kin.”*

9. Nothing has been brought on record by the respondents to indicate that opinion of the Court of Inquiry and remarks of Commandant, Military Hospital, Jabalpur at any point of time or at a later stage was modified or set aside by any subsequent lawful proceedings. Accordingly, the finding of Court of Inquiry which was kept open while granting Special Family Pension, attained finality. In such situation no contrary opinion could have been formed by the respondents and even by the Pension Sanctioning Authority to hold that the accident suffered by the applicant and the injuries caused thereby is not attributable to Army service.

10. One important fact which has been omitted to be considered by the respondents or the Pension Sanctioning Authority is that on the basis of report of Court of Inquiry in respect of deceased soldier the applicant has been paid Special Family Pension holding that the death and injury caused thereon is attributable to Army service. The Pension Sanctioning Authority has relied upon opinion of the Court of Inquiry while sanctioning Special Family Pension to the applicant. Therefore, in view of the facts explained above, no contrary view could have been taken by the respondents to deny ex-gratia compensation to the applicant.

11. During course of hearing our attention has been invited to a judgment of Armed Forces Tribunal, Regional Bench, Chandigarh in O.A. No. 3105 of 2012 decided on 24.07.2013, ***Mrs Daxina Kumari vs Union of India & Ors.*** The Chandigarh Bench of the Armed Forces Tribunal has also reiterated the same proposition of law as held by the Lucknow Bench in the case of Smt ***Prarthana Singh*** (supra). For convenience sake relevant portion of the order of ***Mrs Daxina Kumari*** (supra) is reproduced as under:-

*“Learned counsel for the petitioner, during the course of arguments, had also relied upon the decision of Punjab and Haryana High Court in **Smt Santosh vs Union of India and others**, 2010 (1) SCT 518, decided on 20.11.2009, the copy of which is annexure A-8. In that case the deceased was discharging his duties at line of control in J&K. The death of deceased took place because of heart attack and it was held that the deceased was performing bonafide official duty in Gore Sector which is a coldest place. Such a situation cannot be separated from bonafide duty and the death had occurred directly due to accident in the course of performance of duty. It is, therefore, clear that the Hon’ble High Court of Punjab and Haryana has gone to the extent in granting this payment even if the death had occurred due to heart attack. But in the present case the deceased had died due to the accident while discharging the duties, therefore, his widow was entitled to the ex gratia compensation as per rules applicable on the date of death of the husband of the petitioner which shall be payable to the applicant alongwith 10% interest from the date of filing of the petition till date of deposit. The petition is allowed accordingly.”*

12. In view of the above, there appears to be no room for doubt that death of the applicant’s husband is attributable to Army service and denial of payment of ex-gratia lump sum compensation suffers from vice of arbitrariness. The applicant’s husband died on 19.09.2003 and since then she has been suffering from multiplicity of litigation, representations to authorities and mental pain and financial loss which could be avoided if the authorities had taken prompt action to help the widow of deceased soldier.

13. In view of the above, we are of the view that the case is liable to be allowed.

14. Impugned order dated 14.11.2019 is set aside with all consequential benefits with regard to payment of ex-gratia lump sum compensation. 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.

15. The O.A. is **allowed** accordingly.

16. No order as to cost.

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

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 06.07.2021  
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