

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 482 of 2018****Thursday, this the 22<sup>nd</sup> day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt Manpreet Kaur, W/o late Gnr (OPR) Jagdeep Singh, R/o Village-Tahirpur, (andeshnagar), PO- Mahewaganj, Tehsil & District-Lakhimpur Kheri (UP)-262701.

**.... Applicant**

Ld. Counsel for the: **Shri Virat Anand Singh**, Advocate.  
Applicant

Versus

1. Union of India through, the Secretary, Ministry of Defence South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.
3. Addl Dte Gen Personnel Services AG's Branch, Integrated HQ of MoD (Army), Room No-11, Plot No-108 (West) Brassey Avenue, Church Road, New Delhi-110001.
4. PCDA (P), Draupadighat, Allahabad-211014.

**... Respondents**

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

**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 direct the respondents to recall old PPO dte 19.11.2013 and issue fresh PPO in favour of applicant for grant of SPECIAL FAMILY PENSION from the date issue of earlier PPO after adjustment of Ordinary Family Pension.*

*(b) To direct the respondents to pay ex Gratia as applicable.*

*(c) To direct the respondents to pay the arrears and Ex Gratia payment along with interest of 09% from the date of entitlement.*

*(d) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*

*(e) Allow this application with cost of Rupees of 02 lakhs.*

2. Brief facts of the case giving rise to this application are that the applicant's husband was enrolled in the Indian Army on 21.12.2009. On 13.12.2012 while posted to 255 Med Arty at Ambala Cantt and performing duties of Sahayak of Capt Shinde Shrikant P, husband of the applicant met with a road traffic accident. He was shifted to Military Hospital, Ambala where he was diagnosed with 'Severe Head Injury and Haemothorax' and later he expired. The competent respondent authority investigated into the matter by conducting Court of Inquiry (C of I) and death of husband of the applicant was held as 'Attributable to military service'. Accordingly, claim for Special Family Pension was forwarded which was rejected vide order dated 08.07.2014 with remarks endorsed thereon that deceased soldier was not on duty at the time of accident. Thereafter, first and second appeals were also rejected vide orders dated 15.07.2015 and 22.11.2016 respectively. Widow of the deceased soldier was granted Ordinary Family Pension vide PPO No. F/NA/20299/2013.

This O.A. has been filed for grant of Special Family Pension and Ex-Gratia lump-sum-compensation of Rs 5 Lac.

3. Ld. Counsel for the applicant pleaded that as per Para 12 (D) of Entitlement Rules the deceased soldier should be treated on duty as he went to perform sahayak duty of an officer. He pleaded that husband of the applicant died during duty period, hence, his death is attributable to military service and therefore, the applicant is entitled to Special Family Pension and Ex-Gratia lump-sum-compensation.

4. Per contra, the respondents contended that as per para 213 read in conjunction with clause 105 of Pension Regulations for the Army, 2008 (Part-1), Special Family Pension is granted to the family of an individual if death is due to or hastened by a wound, injury or disease which is either attributable to or aggravated by military service. But in the instant case death of applicant's husband is due to road traffic accident while he was driving motor cycle from unit Officers Mess at Ambala Cant to Battery Office of 255 Medium Artillery, therefore he was not on duty. This was regarded as neither attributable to nor aggravated by military service by Pension Sanctioning Authority that the casualty is not covered under paragraph-6 of Entitlement Rules, 2008 (does not have causal connection to military service) because the deceased soldier was not on duty at the time of casualty, therefore Special Family Pension is not entitled to the applicant. His further contention is that main condition to be satisfied for grant of special family pension and the payment of Ex-Gratia lump sum compensation in the specified circumstances is that the death of the employee concerned should have occurred in the actual

performance of a bonafide official duty. The Ex-Gratia lump sum compensation may not be sanctioned in cases where the deceased soldier was on duty in terms of Entitlement Rules but not in actual performance of bonafide official duties in accordance with para of 1 of Government of India, Ministry of Defence letter No.20/1/98/D(Pay)/Services) dated 22.09.1998. The Ld. Counsel for the respondents submitted that the question whether death was attributable to or aggravated by military service is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982. The Entitlement Rules, 2008 is for Casualty Pensionary Award and not for Ex-Gratia. Respondents have contended that the Court of Inquiry had recommended that 'the casualty is not covered under paragraph-6 of Entitlement Rules 2008' (does not have causal connection to military service) because the deceased soldier was not on duty at the time of casualty, therefore, death of individual is not attributable to military service. His further submission is that PCDA (P) has rejected claim of applicant on the aforesaid grounds. He pleaded the O.A. to be dismissed.

5. After hearing both the sides and perusing the evidence on record, the questions which need to be answered are two folds :-

- (a) Whether travel from unit Officers Mess at Ambala Cant to Battery Office of 255 Medium Artillery during duty period be treated as duty as per Entitlement Rules?
- (b) If yes, is the applicant entitled for Ex-Gratia lump sum compensation and Special Family Pension?

6. The Government of India, Ministry of Defence letter No.20(1)/98-D(Pay/Services) dated 22.09.1998 with regard to conditions of governing the payment of Ex-Gratia lump-sum compensation and guidelines reads as under :-

*“I am directed to refer to Government of India, Ministry of Personnel, Public Grievance & Pension, Department of Pension & Pensioners’ Welfare O.M. No.45/55/97-P&PW(C) dated 11.9.98 and state that the President is pleased to decide that the families of Defence Service personnel who die in harness in the performance of their bonafide official duties, shall be paid the following ex-gratia lump sum compensation:-*

(a)	<i>Death occurring due to accident in the course of performance of duties.</i>	<i>Rs.5.00 lakhs”</i>
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Subsequently, this table has been modified in the year 2010.

7. Coming to the first limb i.e. is the death attributable to military service?” We find that Court of Inquiry has opined that the cause of death of husband of applicant (Late Gnr (OPR) Jagdeep Singh) is due to road traffic accident in unit area, therefore, death of applicant’s husband shall be deemed to be attributable to military service.

8. It is pertinent to mention here that the applicant’s husband was carrying out duty of “Sahayak” of an officer. His place of duty will therefore normally be considered as the place of residence or the office of the officer. In this case the applicant’s husband was proceeding on motor cycle from Officers Mess Ambala Cantt (official/residence of the officer) to the 255 Medium Artillery Battery office (place of work of officer)

when he met with an accident. Thus, the applicant's husband is considered to be on duty on 07.12.2012 when he met with the accident resulting in his death on 13.12.2012. The said accident has also been held by the Court of Inquiry to be attributable to military service.

9. In view of above, we are of the considered opinion that the Court of Inquiry is right in its findings that death of applicant's husband was attributable to military service.

10. Coming to the second issue, as to, "is the applicant entitled for Ex-Gratia lump sum compensation as also Special Family Pension?"

11. The submission of Ld. Counsel for the applicant is that in view of the policy governing the grant of Ex-Gratia lump-sum-compensation a soldier dying due to the accident in course of duties, his NOK is entitled for grant of Ex-Gratia lump-sum-compensation. Since the applicant, as per the provisions of Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982, was on military duty therefore, the accident which occurred on 07.12.2012 is to be treated as military duty and hence deceased soldier's NOK is entitled to grant of Ex-gratia lump sum.

12. Per contra, Ld. Counsel for the respondents argued that for the purpose of Ex-Gratia lump-sum-compensation a person must be performing a bonafide military duty and the applicant's husband was not performing any bonafide military duty. It has also been argued by the Ld. Counsel for the respondents that Para 12 of the Entitlement Rules for Casualty Pensionary Awards 1982 the applicant's husband can only be treated to be on army duty if he was actually performing military duty but

since he was not on bonafide military duty, ex-gratia lump sum grant is not applicable.

13. While filing counter affidavit, respondents have cited the Government of India, Ministry of Defence letter dated 22.09.1998 (read in conjunction with letter No. 20(5)/2009/D(Pay/services dated 04.06.2010 and clarified vide letter No. 2(2)/2011/(Pen/Pol) dated 26.12.2011), we find that para 4 of the Annexure to MoD letter of 1998 is relevant in the instant case which reads as under :-

*“The families of Defence Service Personnel who die in harness in the performance of their bonafied official duties shall be paid ex-gratia-lum-sum.”*

14. Reliance has been placed by Ld. Counsel for the applicant in the case of ***Paramjit Kaur Vs Union of India and Others*** in Original Application No.1954 of 2013, decided on 12.02.2014, wherein Regional Bench, Chandigarh has observed that the word “actual” does not even exist in the main body of Policy letter. Reliance has also been placed in the case of ***Smt. Mamata Sharma Vs Union of India and Others***, in Original Application No. 27 of 2014, decided on 18.09.2015 by Regional Bench, Guwahati, wherein the husband of the applicant was returning from his duty on motorcycle to his quarter in Jalandhar when he met with an accident, sustained severe head injury and subsequently succumbed to the injuries and in that case, in view of the fact he was treated to be on duty and accordingly the denial of Ex-Gratia lump-sum compensation was set aside and applicant was held entitled for Ex-Gratia lump-sum compensation and exemplary cost of Rupees One Lakh was also

imposed on the respondents. Reliance has also been placed on an order passed by the Regional Bench, Jaipur in O.A. No.843 of 2010 titled **Smt. Sushila Devi Vs Union of India and Others**, decided on 10.04.2015. In that case the husband of the applicant died on 16.07.2016 in a road traffic accident in Jodhpur and Court of Inquiry held to ascertain causes of accident had considered the applicant to be on duty therefore accident was considered as attributable to military service.

15. In the aforesaid facts and situation the Original Application was allowed and Ex-Gratia lump-sum compensation was allowed in favour of the applicant.

16. Admittedly, the husband of the applicant (on Sahyak duty) died due to road traffic accident while riding a motorcycle from the unit Officer's Mess at Ambala Cant to the 255 Medium Artillery, Battery Office (unit location) and before he could reach his destination, he met with an accident and ultimately he died.

17. The Court of Inquiry held in this matter has considered death of applicant's husband as attributable to military service. Findings of the Court of Inquiry are as under:-

*“(a) The cause of death of 15224621N Late Gnr (OPR) Jageep Singh is happened due to road traffic accident while riding a motorcycle from the unit Officer's Mess at Ambala Cant to the 255 Medium Artillery, Battery Office and before he reached his destination he met with an accident and ultimately he died.*

*(b) The Individual died due to happened due to road traffic accident while riding a motorcycle from the unit Officer's Mess at Ambala Cant to the Battery Office and before he reached his destination he met with an accident and ultimately he died. Therefore, death of individual is attributable to military service."*

18. Thus, the refusal by the competent authority for grant of Ex-Gratia lump-sum compensation was only on the ground that the applicant was not performing any bonafide official duty which is not a correct view as the soldier was indeed on duty. Therefore, keeping in view the earlier pronouncement of the several Armed Forces Tribunals that have attained finality by lapse of time and no contrary view on the point could be brought to our notice in spite of availing an opportunity for this purpose, we are of the view that the applicant is entitled for grant of Ex-Gratia lump-sum compensation as also Special Family Pension and therefore, the Original Application succeeds and deserves to be allowed.

19. The Original Application is hereby **allowed**. The impugned orders dated 19.11.2013, 27.03.2014 and 08.07.2014, enclosed as Annexure No. 1 to 3 of Original Application, are set aside. The applicant is held entitled to Special Family Pension w.e.f. the date on which Ordinary Family Pension was allowed as Ex-Gratia lump-sum compensation of Rs.5.00 Lakhs. Respondents are directed to ensure payment of difference of the two pensions and the Ex Gratia lump-sum compensation within a period of four months from the date a certified copy of this order is produced, failing which they have to pay interest @ 9% p.a. on the both the amounts from the date of its accrual till the date of actual payment.

20. Respondents are further directed to calculate the difference of Ordinary Family Pension and Special Family Pension and pay the amount to applicant accordingly.

21. No order as to costs.

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

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

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

Dated :22 July 2021  
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