

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 550 of 2017**

Thursday, this the 15th day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Kalash Kumari W/O No 14308608Y Late Gnr Jagdish, R/O Mohalla-Diggital,
Thandi Sadak, Farrukhabad (U.P.).

.... **Applicant**

Ld. Counsel for the: **Shri VK Pandey, Advocate**
Applicant

Versus

1. Secretary to the Government of India, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. Addl Dte Gen, Pers Services, Adj Gen Branch, IHQ of MoD (Army), DHQ, PO-New Delhi-110011.
3. OIC Records, Artillery Records, Nasik Road Camp.
4. PCDA (P), Draupadighat, Allahabad (UP).

... **Respondents**

Ld. Counsel for the: **Mrs Amrita Chakraborty, Advocate**
Respondents Central Govt Counsel.

ORDER (Oral)

1. Applicant's husband No. 14308608Y Gnr Jagdish suffered chest pain on 27.10.1980 at about 06.55 hrs while he was proceeding to attend Physical Training (PT) parade from family line. The deceased soldier was evacuated to 150 Military Hospital where Medical Officer (MO) on duty declared him brought dead. The medical authorities intimated that the deceased soldier died due to 'Ischemic Heart Disease'. As per AFMSF-93 Part-II (Ver-2002) his death is not accepted as either attributable to or aggravated by military service. Applicant is in receipt of ordinary family pension vide PPO No. F/NA/1348/82 dated 12.05.1982. Special family pension claim was rejected vide letter dated 31.03.1981. Thereafter, representations/appeals dated 28.04.1983, 19.07.1983, 06.03.1984, 24.11.2002, 03.07.2014, 12.11.2014 and 08.01.2016 forwarded to OIC Records and Appellate Authorities had no response. Aggrieved by non grant of Special Family Pension she had filed M.A. No. 217 of 2016 but letter it was withdrawn vide order dated 13.07.2016. This O.A. has been filed for grant of Special Family Pension with the following prayers:-

- (i) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to pay the Special Family Pension since

28.10.2008 to till the date of payment and onwards in the interest of justice alongwith the interest @ 18% in the interest of justice.

- (ii) That this Hon'ble Tribunal may kindly be pleased to award the cost of Rs 20,20,000/- (Rupees Twenty Lac and Twenty Thousand only) to the applicant against the opposite parties.
- (iii) That this Hon'ble Tribunal may be pleased to award the cost of this Original Application in the interest of justice.

2. Learned counsel for the applicant submitted that husband of applicant died on duty on 27.10.1980 while he was proceeding from his family quarter to attend Physical Training Parade. 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. Relying upon Rule 14 of Entitlement Rules for Casualty Pensionary Awards, 1982, learned counsel for the applicant contended that NOK-wife of the deceased soldier is entitled to Special Family Pension.

3. On the other hand, learned counsel for the respondents submitted that since as per AFMSF-93 Part-II (Ver-2002)

attributability of fatal case certificate, the cause of death is not attributable to the military service for the reason that service factors have played no role in aggravating the disease. The 14 days Charter of Duties service before the death of the deceased also does not arise attribution to service. Therefore, applicant is not entitled to Special Family Pension. He further submitted that in view of denial of attributability vide certificate dated 02.12.1980 applicant's disease/disability 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 27.10.1991. During course of service on 27.10.1980 he was proceeding from his family quarter to attend Physical Training Parade and while on the way he felt chest pain. He was rushed to the 150 Military Hospital where he was declared brought dead.

6. Before proceeding further, we would like to determine whether applicant's husband was on duty when he died due to 'Ischemic Heart Disease'. 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.”

8. Thus, keeping in view the aforesaid ruling and the fact that the deceased soldier was proceeding to attend Physical Training Parade of the Army, he seems to be on duty.

9. Additionally, respondents while filing counter affidavit (para 4b) have also admitted that the deceased soldier was proceeding from family quarter to attend Physical Training Parade and he died due to Ischemic Heart Disease on 27.10.1980 while on duty, which makes it clear that applicant's husband was on duty when his death took place.

10. In this case we would like to mention that none of the parties have produced copy of Court of Inquiry 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: 15.07.2021
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