

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 61 of 2020****Thursday, this the 08th day of July, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt Gayatri, W/O late Tulsi Ram, Gnr No-15135661-H R/O Vill-Bhelgaon,
Tehsil-Bindki, Po-Alampur, Distt-Fatehpur, Pin-212659.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarter, Ministry of Defence, Government of India, South Block, New Delhi-110011.
3. Second Appellate Committee on Pension (SACP), Integrated Head Quarter of MOD (Army) PS4.
4. The Chief Record Officer, Artillery Records, Nasik Road Camp, PIN-908802, C/O 56 APO.
5. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the :**Mrs Anju Singh, Advocate**
Respondents Central Govt Counsel.

ORDER (Oral)

1. This 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:-

- (i) To grant Special Family Pension from Next date of death of applicant's husband i.e. 02.05.2007.
- (ii) To pay difference of arrears of Special Family Pension along with 12% interest from the Next date of death of applicant's husband, i.e. 02.05.2007 till it is actually paid.
- (iii) To pay ex-gratia payment.
- (iv) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.

2. Briefly stated the facts of the case are that the husband of the applicant late Gnr Tulsi Ram was enrolled in the Indian Army on 15.07.1998 and died on 01.05.2007 due to road accident while on casual leave for the period 24.04.2007 to 10.05.2007. Late Gnr Tulsi Ram met with an accident while driving motor cycle which was hit by a civil truck resulting into his death on the spot on 01.05.2007. A Court of Inquiry was convened by Headquarters Madhya Pradesh, Chhattishgarh and Allahabad Sub Area to investigate into the circumstances under which the said accident occurred, wherein his death was regarded as 'Attributable to Military Service', as the individual was on casual leave. Later Officer-in-Charge, Artillery Records vide letter dated 31.05.2006 held that cause of death of the deceased soldier is regarded as 'Not Attributable to Military Service' under the provisions of Govt of India, Ministry of Defence letter dated 01.09.2005 and even No dated 31.05.2006. Applicant is in receipt of ordinary family pension vide PPO No. F/NA/010568/2007. Claim for grant of Special Family Pension was submitted on 14.10.2016 but it was rejected vide order dated 24.11.2016. Thereafter, first

and second appeals were also rejected vide orders dated 18.10.2016 and 20.03.2019 respectively. This O.A. has been filed for grant of Special Family Pension and ex-gratia compensation.

3. Learned counsel for the applicant submitted that husband of the applicant was on casual leave when he met with an accident resulting in his death. He further submitted that the Hon'ble Supreme Court in the case of ***Nand Kishor Mishra vs Union of India & Ors***, Civil Appeal No 377-378 decided on 08.01.2013 has held that casual leave is to be presumed to be duty and injury sustained during that period is attributable to military service. Learned counsel for the applicant has further relied upon O.A. No 203 of 2016 decided on 13.07.2016, titled ***Mrs Poonam Tomar Vs Union of India & Ors*** and O.A. No. 48 of 2018 decided on 12.03.2018, titled ***Ex Hav Jai Prakash Vs Union of India & Ors*** and submitted that applicant be entitled to Special Family Pension keeping in view the aforesaid judgments.

4. Rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that the pension sanctioning authority as well as first and second appellate authorities have considered death of applicant's husband as neither attributable to nor aggravated by military service hence applicant is not entitled to special family pension. Further submission of learned counsel for the respondents is that as per para 123 read in conjunction of para 105 of Pension Regulations for the Army, 2008 (Part-I) Special Family Pension is granted to the next of kin to an individual if death is caused due to injury or disease which is either attributable to or aggravated by military service. His further submission is that death of applicant's husband is not covered under para 6 of Entitlement Rules, 2008 i.e. death has no causal connection to military service. Concluding submissions, learned counsel for

the respondents submitted that since death of applicant has no causal connection with military service and his death being neither attributable to nor aggravated by military service, she is not entitled to Special Family Pension. He pleaded for the O.A. to be dismissed.

5. Heard the learned counsel for the parties and perused the record.

6. From the facts noted above, it is apparent that the deceased soldier had gone out of the Unit on casual leave. While on casual leave, on the fateful day he met with an accident while driving motor cycle which hit with a truck resulting in his on the spot death. It is clear that the deceased soldier, at the time of accident, was going for a private purpose. When the accident in question took place, applicant's husband was not doing any military job nor anything connected with military service.

7. We may refer to a bunch of cases led by T.A. No. 61 of 2010 (arising out of Civil Writ Petition No.12516 of 2009) **Jagtar Singh Versus Union of India & others**, decided on 02.11.2010 by another Bench of this Tribunal. In this case the individual had sustained injury resulting into disability on account of which the individual was ultimately invalided or died and in that case the injury or death was sustained at the time when the individual was on casual leave. In that bunch of cases the Bench referred the provisions of Regulations 173 and 175 of Pension Regulations for the Army, 1961, Rules 6,7,8,12,13,14,15,18,19,20 and 21 of Entitlement Rules, 1982 as also para 423 of Regulations for Medical Services of Armed Forces, 1983. The Bench also discussed in various judgments of High Courts including the above said judgment of Hon'ble the Punjab & Haryana High Court in **UOI & Others Vs Khusbash Singh**, LPA 978 of 2009 **decided** on 31.03.2010, and also the judgments of Hon'ble the Apex Court and laid down as follows :

“ To sum up in our view the following principles should be the guiding factors for deciding the question of attributability or aggravation, where the disability or fatality occurs, during the time the individual is on authorized leave of any kind.”

(a) The mere fact of a person being on ‘duty’ or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, however, remote, between the incident resulting in a such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as ‘duty’.

(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalize the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day to day life as a member of the force.

(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service”.

8. After laying down the said principles, the Bench dismissed T.A. 61 of 2010 '**Jagtar Singh Versus Union of India & others**', holding that the injuries sustained by the individuals were not connected to or related to military service.

9. Thus, it is clear from the above law laid down by the Hon'ble Apex Court that for an entitlement to disability pension or special family pension, it has to be shown that there is some causal connection between the death or disability and service of the individual in the military.

10. In the present case, there is no causal connection between the death of husband of the applicant and military service. The deceased soldier Tulsi Ram was going on motor cycle when he met with an accident causing his death. He was not on any kind of military duty and as such his death cannot be said to be attributable to military service.

11. While arguing learned counsel for the applicant has also relied upon the judgment of Hon'ble the Punjab & Haryana High Court in Civil Writ Petition No.18617 of 2006 **Smt. Premwati Versus Union of India & others**, decided on 15.02.2008. We have gone through this judgment and we find that in that case the husband of widow had died in an accident when he left for duty on his Scooter from his residence. The petition was allowed by Hon'ble the Punjab & Haryana High Court on the ground that in a similar case the respondents Union of India & others had admitted in the written statement that the cause of death

was attributable to Air Force service. In these circumstances the High Court held that the respondents cannot be permitted to take a different stand in the case of Smt. Premwati. Thus the facts of that case are entirely different from the case in hand.

12. In view of the entire above discussion, we are satisfied that death of the husband of the applicant was not having any causal connection or relation with the military service, therefore, applicant is not entitled to Special Family Pension and the O.A. is liable to be dismissed.

13. The O.A. is accordingly **dismissed**.

14. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 08.07.2021
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