

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 492 of 2017

Friday, this the 30th day of July, 2021

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

Smt Shyamal Sri, wife of late L/Nk Shiv Narayan (Army No. 13689321F) Resident of village-Jainpur, Post Office-Bikepur, Distt-Auraiya, Uttar Pradesh

.... Applicant

Ld. Counsel for the: **Shri Sudhir Kumar Singh**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of the Army staff, Army Headquarters, South Block, New Delhi.
3. General Officer Commanding-in-Chief, Headquarters, Central Command, Lucknow.
4. Major, Senior Account Officer, Pension Group, Records Brigade of Guards, Pin-900746, C/O 56 APO.
5. Principal Controller, Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

... Respondents

Ld. Counsel for the: **Dr. SN Pandey**, Advocate
Respondents. Central Govt Counsel.

ORDER

1. The present O.A. has been filed by applicant for grant of Special Family Pension under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has sought the following reliefs:-

(a) Set aside the impugned order dated 24.06.2013 passed by the respondent No 4 (Annexure No 1 to this application).

(b) Direct the respondents to provide the Special Family Pension and other related benefits to the Applicant (widow of deceased soldier) within stipulated period, in accordance with law).

(c) Grant any other further relief by directing the respondent authorities, as deem just and proper in circumstances of the case and a direction to the respondents to complete a fresh enquiry within stipulated period may also be issued, if required.

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 12.09.1987. He reported back to his unit on 30.09.2003 after availing 62 days annual leave. His 12 Bore Gun DBBL Gun Registered Number 10275/97 with 17 live cartridges were kept in safe custody in unit kote. On 01.10.2003 he visited the kote and shot himself resulting in his death. A unit Court of Inquiry (C of I) was conducted which found that L/Nk Shiv Narayan (now late) had committed suicide on account of stranded relations with his wife. The Court of Inquiry also opined that death in respect of L/Nk Shiv Narayan (Now late) is not attributable to military service. Accordingly applicant was granted Ordinary Family Pension and other dues payable to her. Applicant had submitted a petition

through Zila Sainik Kalyan Evam Punarvas karyalaya, Auraiya for grant of Special Family Pension which was turned down vide order dated 24.06.2013. Being aggrieved, the applicant has filed this Original Application for grant of Special Family Pension.

3. Submission of learned counsel for the applicant is that applicant was not provided with copy of C of I which was held to investigate cause of death in respect of L/Nk Shiv Narayan (now late). His further submission is that as per wife of the deceased soldier, death of her husband is mysterious and requires further investigation by conducting further inquiry in the matter. His concluding submission is that since her husband's death is caused in service, it will be deemed to be attributable to military service. The learned counsel pleaded for payment of Special Family Pension to applicant.

4. Per contra, learned counsel for the respondents submitted that it is not disputed that husband of applicant died on 01.10.2003 due to gunshot injury resulting in his death on the spot. However, for grant of the Special Family Pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injury/death and military service. He further submitted that unless injury sustained/death has causal connection with military service, armed forces personnel/their NOKs cannot be allowed Disability Pension/Special Family Pension merely on the reason of being on duty. He further submitted that in the given facts and circumstances, husband of applicant shot himself by his personal weapon to commit suicide, there was no causal connection between the death and military service and, therefore, applicant is

not entitled to Special Family Pension, as she is claiming. In support, learned counsel for the respondents has placed reliance on the following facts:-

(a) The injury/death of husband of applicant was opined as neither attributable to nor aggravated by military service and also not connected with military service by the Court of Inquiry.

(b) Special Family Pension claim was denied vide order dated 24.06.2013 on the ground that death in respect of deceased soldier was not attributable to military service.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. In this case, L/Nk Shiv Narayan (now late), applicant's husband reported to his unit after availing annual leave and deposited his personal weapon in unit kote on 30.09.2003. On 01.10.2003 he went to kote again and shot himself resulting in his death. A C of I was convened to investigate the circumstances leading to his death which gave following opinion:-

"No. 13689321F L/Nk (BB) Shiv Narayan, in the opinion of court committed suicide by shooting himself with his 12 Bore DBBL Gun, possibly due to severe stress felt by him because of strained relations with his wife Smt Shyamal Sri.

Cause of death as established by the autopsy report was due to Ante-mortem injuries, sustained by the individual due to gun shot.

The indl would have decided to commit suicide/end his life after his heated and public argument with his wife towards the end of his AL. This would have multiplied due to loneliness during his return journey as there was no body whom he could vent his feelings. The indl would have been in severe state of depression due to discordial relations with his wife. Knowing the indl as a polite, sincere and a hard working, the indl would have been in a state extreme despair thinking about the deteriorated relations with

his wife and a marital relation that is on the verge of breaking up.

The free time during his return journey would have given him enough time to think and mull over the issue and decide his future course of action. As, after having reached the unit loc the indl spent only 26 hrs before suicide during which he could not get enough time and opportunity to vent out his feelings which would have helped easing his mental stress.”

7. The respondents have denied Special Family Pension to the applicant on the reason that for getting Special Family Pension, in respect of her deceased husband, who committed suicide during course of employment, there must be some causal connection between the death and military service, and this being lacking in applicant's case, as there was no causal connection between the death and military service, she is not entitled for the same.

8. This question has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the Hon'ble Apex Court. In a more or less similar matter titled, **Secretary, Govt of India & Others Vs. Dharamveer Singh**, decided on 20 September 2019, in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with “Faciomaxillary and Compound Fracture 1/3 Femur (LT)”. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave report, dated August 18, 1999 to the effect that injuries occurred in peace area, were attributable to military service. One of the findings of the report recorded under Column

3 (c) was that “No one was to be blamed for the accident. In fact respondent lost control of his own scooter”. In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon’ble Apex Court in the case of **Madan Singh Shekhawat v. Union of India & Ors**, (1999) 6 SSC 459 was allowed by the Tribunal holding that respondent was entitled to disability pension. Aggrieved by the same, a Civil Appeal was filed in which the Hon’ble Apex Court framed following 03 points for consideration:-

(a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?

9. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

10. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

“In view of Regulations 423 clauses (a), (b), there has to be causal connection between the injury or death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury be connected with military service howsoever remote it may be. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributed to risk common to human being. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service”.

11. Regarding question number 3, the Hon'ble Apex Court held that if a causal connection has not been found between the disabilities/death and military service, applicant would not be entitled to the disability pension/Special Family Pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well as various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and, for such injury, resulting in disability, the injury would be considered attributable to or aggravated by military service.

12. The Hon'ble Apex Court while summing up has also taken note of the guiding factors of the Armed Forces Tribunal, in the case of **Jagtar Singh v. Union of India & Ors**, decided on November 02, 2010 in T.A. No. 60 of 2010, approved in the case of **Sukhwant Singh**

and **Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability/death is to be required to be dealt accordingly. Those guiding factors are reproduced below for the ready reference:-

“(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, howsoever remote, between the incident resulting in 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 is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission of 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 the 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 causal 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 unconnected 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 a 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.”

13. We have considered the applicant's case in view of above guiding factors and we find that, though, husband of applicant was on duty when he shot himself resulting in his death, the activity in which death has caused is not connected with his military service in any manner. He committed suicide not due to stress of military service but due to stress caused due to strained relations with his wife. The cause behind stress being not associated with military service but for personal reasons, no causal connection can be assumed in death and military service entitling applicant to get Special Family Pension. The plea that applicant's husband's death was mysterious and needed probe is not acceptable keeping in view the C of I report which specifically says that deceased soldier's death was a case of suicide.

14. In the result, we hold that the claim of Special Family pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

15. No order as to costs.

16. Pending applications, if any, are disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 30th July, 2021
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