

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 73 of 2020**Wednesday, this the 28th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Sunita Devi

W/o No. 1066231M Late Dfr Kishor Kumar)

R/o House No. 149, Hata-Ram Das, Sadar Bazar, Lucknow Cantt
Post – Dilkusha, Dist – Lucknow (UP) – 226002

..... Applicant

Counsel for the Applicant : **Shri Shailendra Kumar Singh &**
Shri Ravi Kumar Yadav, Advocate
Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block-III, New Delhi – 110011.
3. OIC Records, Armoured Corps Records, PIN – 900476, C/o 56 APO.
4. CO, No. 89 Armoured Regiment, C/o 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad (UP)-211014.
.....Respondents

Counsel for the Respondents : **Dr. Gyan Singh,**
Central Govt. Counsel**ORDER**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

“A. *To quash or set aside the Respondent letter dated 30 Mar 2004 (Annexure A-1 & impugned Order) and PPO by which family pension was granted to the applicant.*

- B. To issue suitable directions/instructions to Respondents to grant the SPECIAL FAMILY PENSION and consequential benefits related to DEATH IN SERVICE in favour of the applicant with effect from 23.07.2001 (date of death of applicant's husband) and to pay the arrears of difference accrued thereof alongwith suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.*
- C. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant."*

2. Facts giving rise to Original Application in brief are that husband of the applicant was enrolled in the Army on 03.12.1980. While serving with 89 Armoured Regiment, husband of the applicant died on 23.07.2001 due to natural death at Military Hospital, Roorkee. The husband of the applicant has rendered 20 years, 07 months & 19 days of service. As per opinion of Court of Inquiry, the deceased soldier died due to Cardiac Arrest as proven by the Post Mortem report and his death was considered as attributable to military service. Special family pension claim was processed by Records, Armoured Corps but Medical Advisor (Pension) at PCDA (P), Allahabad rejected the claim stating that death of deceased is not related to military service. The applicant is in receipt of ordinary family pension vide PPO dated 15.01.2004. The applicant forwarded a petition dated 18.12.2013 for grant of Special Family Pension which was replied by the respondents denying Special Family Pension vide letter dated 22.01.2014. Thereafter, the applicant forwarded a representation dated 26.04.2019 which was also rejected by the respondents vide letter dated 02.07.2019.

Aggrieved by non grant of Special Family Pension the applicant has filed this Original Application.

2. Learned counsel for the applicant submitted that husband of the applicant died on duty on 23.07.2001 while on the posted strength of 89 Armoured Regiment. In Death Certificate it was mentioned that husband of the applicant DIED IN ACTION on 23.07.2001 – “Found Dead Cause Unknown”. The PPO dated 15.01.2004 for family pension has been issued to the applicant with endorsement “Death in Service”. The Court of Inquiry has also opined death of deceased soldier as attributable to military service. Relying upon the judgment of the Hon’ble Supreme Court in **Union of India and others vs. Tarsem Singh**, (2008) 8 SCC 648 and **Shiv Dass v. Union of India** (2007) 9 SCC 274 and AFT (RB) Lucknow judgment in O.A. 550 of 2017, **Smt. Kalash Kumari vs. Union of India & Ors**, decided on 15.07.2021, he pleaded that wife of the deceased soldier is entitled to Special Family Pension. Further submission of learned counsel for the applicant is that since applicant’s husband was on duty at the time of death and his death is considered as attributable to military service, hence, denial of Special Family Pension to deceased soldier’s wife is arbitrary in nature.

3. On the other hand, learned counsel for the respondents submitted that Special Family Pension claim of the applicant was processed by Records, Armoured Corps but Medical Advisor (Pension) at PCDA (P), Allahabad rejected the claim stating that

death of deceased is not related to military service. He further submitted that as per 213 and 105 (a) of Pension Regulations for the Army, 1961 (Part-1), applicant is not entitled for special family pension :-

“213. Special Family Pension may be granted to the family of an individual, if his death was due to or hastened by a wound, injury or disease which was attributable to military service or the aggravation by military service or aggravation by the military service of wound, injury or disease which existed before or arose during military service”.

“105(a). Special Family Pension may be granted to the family or service personnel if his death occurred in the circumstances mentioned in category B and category C of the Regulations 82 of these Regulations due to hastened by :-

- a- A wound, injury or disease which was attributable to military service or
- b- Was due to aggravation by service of a wound, injury or disease which existed before or arose during service and in case of death after retirement/discharged. Provided that the service personnel had retired/discharged otherwise than voluntarily/at own request on compassionate grounds before completion of terms of engagement.”

4. We have heard learned counsel for the parties and perused the records.

5. Before proceeding further, we would like to determine whether applicant's husband was on duty when he died due to Cardiac Arrest. With regard to definition of “duty” we rely on Appendix II of Clause 12 of Entitlement Rules for Casualty Pensionary Awards 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.”

6. This is a case where death of husband of the applicant was due to Cardiac Arrest, a natural death while on military duty and Court of Inquiry has opined the death of deceased soldier as attributable to military service, however, Medical Advisor (Pension) at PCDA (P) Allahabad has rejected the claim of applicant for grant of Special Family Pension on the ground that death of deceased is not related to military service. The Hon'ble Apex Court has made it very clear that the opinion of the Medical Board cannot be overruled by higher chain of command in the case of **Ex. Sapper Mohinder Singh vs. Union of India** in Civil Appeal No 104 of 1993 decided on 14.01.1993.

7. Thus in sum and substance we set aside the decision of competent authority and PCDA (Pension) overruling the opinion of Court of Inquiry and Post Mortem report. The fact that the deceased soldier was on duty and he died due to natural death which has also been accepted by the respondents in Para 3 & 4 of their counter affidavit, the applicant is entitled for grant of Special Family Pension.

8. 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.

9. 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 @ 8% per annum.

10. No order as to cost.

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

Dated: 28th July, 2021

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