

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 8 of 2021**Monday, this the 19th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt. Gajana Devi
W/o Late Nk Hans Raj
R/o Vill – Mandi Shyam Nagar, PO – Gurukul Sikanderabad,
Distt – Gautam Buddha Nagar (UP)

..... Applicant

Counsel for the Applicant : **Shri K.K. Misra**, Advocate
Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, South Block, New Delhi.
3. Officer-in-charge, EME Records, Sikanderabad.
4. PCDA (P) Allahabad.

.....Respondents

Counsel for the Respondents : **Shri Amit Jaiswal**,
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:

- “(i) To quash EME Records letter No. 14599612/FP-8/Pen dt 31 Oct 2007 (Annexure A-3) and AG's Branch letter No B/20846/40/2019/AG/PS-4/(imp-II) dt 14 July 2020, (Annexure A-5) to this OA.
- (ii) Grant Special Family Pension to the applicant w.e.f. the date of the death of her husband i.e. 29 Sep 2006, with arrears and interest as applicable.

(iii) *Any other relief which Hon'ble Court may think just and proper may be granted in favour of the applicant.*

(iv) *Cost of the case may be allowed."*

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 25.09.1986. In October 1995, applicant's husband was diagnosed with "RHEUMATIC HEART DISEASE" and was placed in permanent low medical category CEE (P) w.e.f. 26.04.1996. Thereafter, on 09.10.2002, applicant's husband was placed in P2 (Permanent) for two years and after two years he was again placed in P2 (P) w.e.f. 09.10.2004 for two years. The applicant's husband was again admitted in Military Hospital, Pune from 11.02.2006 to 21.08.2006 for medical re-categorisation and medical authorities recommended applicant's husband for six weeks sick leave from 22.08.2006 to 02.10.2006 and instructed to report back to Military Hospital, Pune for review on expiry of his sick leave. The husband of applicant expired on 29.09.2006 while returning to his unit in train Dakshin Express near Mathura railway station. As per death certificate issued by Military Hospital, Agra Cantt, the cause of death of the applicant's husband was 'UNKNOWN'. As per Post Mortem Report of Govt. Civil Hospital, Agra, the cause of death of the deceased soldier could not be ascertained, hence, his viscera was preserved for chemical analysis. The Court of Inquiry was held on 29.09.2006 and opined that 'individual prima facie expired due to heart problem, however, exact cause assertion should be waited for which is only possible by chemical analysis'. However, as per Forensic Science Laboratory (FSL) report dated 23.01.2007, issued by Vidhi Vigyan

Prayogshala, Agra, the cause of death of the individual was due to accidental intake of methyl alcohol/adulterated alcohol. As per opinion of Commanding Officer, 7021 EME Bn, applicant's husband was travelling from his home town to his parent unit and died enroute, hence, he was on a bonafide military duty in peace area. As per CFL, Agra Viscera report, the cause of death of the individual is accidental intake of Methyl alcohol/adulterated alcohol during train journey is unrelated to his primary illness 'RHEUMATIC HEART DISEASE'. GOC, 21 Corps had directed that the death of the individual is attributable to military service. The applicant is in receipt of ordinary family pension w.e.f. 30.09.2006 vide PPO dated 07.04.2008. The claim of the applicant for grant of special family pension was rejected vide letter dated 31.12.2007. First appeal of the applicant dated 14.10.2019 was processed to the Appellate Committee and was also rejected vide letter dated 14.07.2020 treating death being not attributable to military service. Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant's husband was returning back to report his unit by train after expiry of sick leave on 28.09.2006 and died in train near Mathura railway station. The cause of death as per post mortem report was UNKNOWN. He further submitted that at the time of death, applicant's husband was returning/travelling to join his duty, hence his death should be treated as attributable to military service and accordingly, applicant should be granted special family pension as per entitlement.

4. Per contra, learned counsel for the respondents submitted that husband of applicant expired on 29.09.2006 in train near Mathura railway station while returning to his unit. As per death certificate issued by Military Hospital, Agra Cantt, the cause of death of the applicant's husband was 'UNKNOWN'. As per Post Mortem Report of Govt. Civil Hospital, Agra, the cause of death of the deceased soldier could not be ascertained, hence, his viscera was preserved for chemical analysis. The Court of Inquiry was held on 29.09.2006 and opined that individual prima facie expired due to heart problem however, exact cause assertion should be waited for which is only possible by chemical analysis. However, as per Forensic Science Laboratory (FSL) report dated 23.01.2007 issued by Vidhi Vigyan Prayogshala, Agra, the cause of death of the individual was due to accidental intake of methyl alcohol/adulterated alcohol. Therefore, as per Para 213 of Pension Regulations for the Army, 1961 (Part-1), the death of applicant's husband due to accidental intake of methyl alcohol/adulterated alcohol in train while returning to his parent unit, is not related to duties of military service. 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 death and military service. He further submitted that unless there is any causal connection between the death and military service, armed forces personnel cannot be allowed special family pension merely on the reason that applicant's husband died while travelling back to unit to rejoin duty after expiry of sick

leave. Since the circumstances of death are not related to the duties of military services, hence, applicant is not entitled for special family pension.

5. We have heard learned counsel for the parties and have also perused the record.

6. The respondents have denied special family pension to the applicant on the reason that for getting special family pension while travelling back to unit to rejoin duty, 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.

7. 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, **Secretary, Govt of India & Others Vs. Dharambir 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, this Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 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?.

8. 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.

9. 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”.

10. Regarding question number 3, the Hon'ble Apex Court held that if a causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability 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.

11. The Hon'ble Apex Court while summing up took note of following guiding factors by the Armed Forces Tribunal, Regional

Bench, Chandigarh, in the case of **Jagtar Singh v. Union of India & Ors**, Decided on November 02, 2020 in TA No 61 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 pension is required to be dealt with accordingly. Those guiding factors are reproduced below for 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 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 generalise 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 Rules 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 behavior”.

(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.”

12. We have considered the applicant’s case in view of above guiding factors and we find that Court of Inquiry had opined that exact cause of death should be waited for which is only possible by chemical analysis. Later on, as per FSL report, the cause of death of the applicant’s husband was due to accidental intake of methyl alcohol/adulterated alcohol. Hence, there seems no causal connection between the death occurred in train while travelling back to his unit to rejoin duty and military service in any manner and, therefore, applicant is not entitled to special family pension.

13. 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**.

14. No order as to cost.

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

Dated: July, 2021
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