

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 85 of 2018**Thursday, this the 22nd day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt. Sarita Devi
W/o Late Awadhesh Singh (No.2985861N)
R/o Village – Jummanpur, Post – Jyota,
Police Station – Mohammadabad, District – Farrukhabad
..... ApplicantCounsel for the Applicant : **Shri Ashok Kumar**, Advocate
Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Incharge Records, Rajput Regiment, PIN-900427, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
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) *This Hon'ble Court may graciously be pleased to direct the respondents nos. 2 & 3 to give special family pension to the applicant towards the services of her husband Late Awadhesh Singh (No.2985861(N) who died on 7-10-1996 due to NON HODURINS LYMP HONID (Cancer) during his service period.*
- (ii) *This Hon'ble Court may graciously be pleased to direct the respondents nos. 2 & 3 to ensure the*

payment of arrear of family pension since 7-10-1996 till date, to the applicant.

(iii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.

(iv) Award costs to the applicant."

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 26.04.1986. The husband of applicant while serving in RR Battalion in J&K sustained injury on 22.01.1995 and was admitted to Command Hospital, Pune on 16.07.1996 and died on 07.10.1996 due to disease "Non Hodgkins Lymphoma". Court of Inquiry opined the death of soldier to be attributable to military service. Accordingly, applicant was granted ordinary family pension. Thereafter, vide PPO dated 27.09.1999, her pension has been revised as per policy on the subject. The claim of the applicant for grant of special family pension was processed by Rajput Records vide letter dated 03.11.1997 which was rejected by the competent authority vide letter dated 19.06.2001 stating that death of the soldier due to an injury is neither attributable to nor aggravated by military service and the circumstances which are not in any way connected to duties of military service. Thereafter, applicant submitted a legal notice dated 05.01.2017 to the respondents for grant of Special Family Pension which was rejected by Record Office vide letter dated 25.01.2017 intimating the applicant that her appeal for grant of special family pension cannot be taken for consideration being already rejected vide Govt. of India, Ministry of Defence letter dated

19.06.2001. Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant's husband was serving in Nausera (J&K) when suffered with non-hodurins lymph honid (cancer) due to continuous exposure to hostile work environment subject to extreme weather condition and occupation as hazards, resulting he died after long treatment. The applicant later came to know about the fact that she is entitled for special family pension, therefore, she made a representation on 02.06.2000 before the Record Officer, Rajput Regiment but none of the authority has paid any heed over her request. The applicant also requested to the respondents to revise her pension but they have also denied the same. He further submitted that as per Circular No. 510 dated 16.04.2013, enhancement of ordinary family pension in respect of pre-2006 JCO/OR family pensioners will be done. Hence, the applicant sent a legal notice dated 16.06.2017 under section 80 C.P.C. for non payment of special family pension but no reply is received from the side of respondents. Learned counsel for the applicant pleaded that husband of applicant was on duty suffered with cancer disease and died during service period, therefore, his death being attributable to military service, applicant should be paid special family pension.

4. Per contra, learned counsel for the respondents submitted that husband of applicant while serving in RR Battalion sustained injury in knee on 22.01.1995 and was admitted to Command Hospital, Pune on

16.07.1996 and died on 07.10.1996 due to disease "Non Hodgkins Lymphoma". Court of Inquiry opined the death of soldier to be attributable to military service. Accordingly, applicant was granted ordinary family pension. Thereafter, vide PPO dated 27.09.1999, her pension has also been revised as per rules. The claim of the applicant for grant of special family pension as processed by Rajput Records letter dated 03.11.1997 was rejected by the competent authority vide letter dated 19.06.2001 stating that death of the soldier due to an injury is neither attributable to nor aggravated by military service and the circumstances which are not in any way connected 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 from the injury sustained while on duty. Since the death of applicant's husband during long treatment in Command Hospital, Pune is 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, there must be some causal connection between the death and military

service/duty, 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 special family pension.

7. We have considered the applicant's case and find that applicant's husband sustained injury while on bonafide military duty on 22.01.1995 in CI (Ops) area in J&K which was attributable to military service. Thereafter, applicant's husband was admitted to Command Hospital, Pune on 16.07.1996 and died on 07.10.1996 during treatment in Command Hospital, Pune. Accordingly, applicant was granted family pension. Since, the death of applicant's husband is under the circumstances which are not in any way connected to duties of military service as it is not due to knee injury sustained on 22.01.1995 but due to other reason, therefore, applicant is not entitled to special family pension.

8. 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**.

9. 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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