

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 484 of 2021

Wednesday, this the 13th day of July, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt Poonam Singh, Next of Kin of No 2500495 Late Sep Ajay Kumar Singh, Resident of – Diptiganj Railway Crossing, Hariharpur Malak, Nilmatha, Lucknow.

..... Applicant

Counsel for the Applicant : **Shri Angrej Nath Shukla, Advocate**

Versus

1. Union of India through Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi - 110011.
2. Records The Punjab Regiment, PIN- 908761, C/o 56 APO.
3. Welfare Officer, HQ Central Command (A), Lucknow (U.P.)- 226002.
4. PCDA (P) (Army) Draupadi Ghat, Allahabad (U.P.)- 211014.

.....Respondents

Counsel for the Respondents : **Shri Manu Kumar Srivastava,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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 direct the respondents/ competent authority to consider and take necessary action for payment of special family pension of No 2500495M Late Sep Ajay Kumar Singh regarding which she has submitted application on 08.07.2021 through registered post by ventilating her grievances which is still pending for consideration.*
- “(b) to issue any other appropriate order or direction as this Hon’ble Tribunal deem fit and proper in nature and circumstances of the case.*
- “(c) to allow this application in favour of the applicant with cost.*

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 04.01.2005. Husband of the applicant, while serving with 18 PUNJAB was granted Advance of Annual Leave wef 28.12.2013 to 26.01.2014. He died on 13.01.2014 due to accidently slipped and drowned in river. As per Court of Inquiry his death was considered as neither attributable to nor aggravated by military service. Applicant was granted enhanced rate of ordinary family pension @ Rs. 6,265/- vide PPO dated 06.01.2015. Applicant preferred representation for grant

of Special Family Pension which was rejected vide order dated 28.08.2021 on the ground that cause of death of her husband has been conceded as neither attributable to nor aggravated by military service. Hence, she is not entitled to special family pension in terms of Regulation 105 of the Pension Regulations for the Army 2008 (Part-1). Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that husband of the applicant died on 13.01.2014 due to drowning in river while on Advance of Annual Leave. She applied for providing document of court of inquiry but till date it has not been provided to her. Learned counsel for the applicant further submitted that Section 213 of Pension Regulations for the Army, 1961 provides that special family pension may be granted to the family of an individual if his death was due to or hastened by :-

(a) a wound, injury or disease which was attributable to military service.

OR

(b) the aggravation by military service of a wound, injury or disease, which existed before or arose during military service.

4. Learned counsel for the applicant further submitted that applicant is entitled Special Family Pension under the provisions of Govt of India letter No 20(2)/2016/D(Pay/Services) dated 02.11.2016. He pleaded that since husband of the applicant was on

Annual Leave, which is treated as on duty, hence death of husband of applicant should be considered as attributable to military service and direction be issued to respondents to grant special family pension to the applicant.

5. Per contra, learned counsel for the respondents submitted that husband of applicant died on 13.01.2014 due to drowning in river. Applicant was granted enhanced rate of ordinary family pension. In addition, applicant was granted terminal benefits i.e. final settlement of account credit balance, leave encashment, AFPP Fund, AGI Death benefits, AGI maturity benefits and Death cum retirement Gratuity. Her claim for grant of special family pension was considered but death of husband of the applicant was found as neither attributable to nor aggravated by military service, hence her claim was rejected in terms of Regulation 105 of the Pension Regulation for the Army 2008 (Part-1).

6. Learned counsel for the respondents further submitted that husband of the applicant died due to drowning in river while on leave. There is no causal connection between the death and military duty. Hence death was conceded as neither attributable to nor aggravated by military service and applicant was not granted special family pension. It is not a case where the death of husband of the

applicant took place due to service conditions but death took place due to drowning in river. The entire amount due have been paid to the applicant. Learned counsel for the respondents prayed that instant O.A. has no substance and is liable to be dismissed.

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

8. The question before us to decide is 'whether the applicant whose husband had died due to drowning in river is entitled for grant of special family pension?

9. Regulation 105 of the Pension Regulations for the Army (Part-1), 2008 deals with grant of special family pension which reads as under:-

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

(i) a wound, injury or disease which was attributable to military service, or

(ii) 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.

(b) The question whether death is attributed to or aggravated by military service shall be determined under the Entitlement Rule For

Casualty Pensionary Awards, 1982 contained in APPENDIX-IV to these Regulations.

Category – B and C of Regulation 82 Pension Regulations for Army (Part-1), 2008 reads as under:-

(i) Category – B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to hostile work environments subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

(ii) Category C

Death or disability due to accidents in the performance of duties such as:-

- (i) Accidents while travelling on duty in Government vehicles or public/private transport.*
- (ii) Accidents during air journeys.*
- (iii) Mishaps at sea while on duty.*
- (iv) Electrocution while on duty etc.*
- (v) Accidents during participation in organized sports events/adventure activities/expeditions or training.*

10. 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, and this being lacking in instant case, as there was no causal connection between the death and military service, she is not entitled for the same.

11. 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 and it has been held that for grant of special family pension, there must be some causal connection between death and military service.

12. We have considered the applicant's case and we find that death of husband of the applicant was considered as neither attributable to nor aggravated by military service due to death of husband of the applicant being not connected with his military duties in any manner. Case of the applicant for grant of special family pension is not covered under any of the policy issued by Govt of India, hence 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: 13 July, 2022

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