

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

**ORIGINAL APPLICATION No.826of 2022**

Monday, this the 17<sup>th</sup> day of July, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

**“Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Smt. Banarasi Devi @ Vanarasi Devi, Wife of Rama Shankar Rai, (Mother of No. 15815542P Sep Ajit Kumar Rai), Permanent resident of Village: Kanehari, Post Office: Kanehari, Tehsil: Mohania, District: Kaimur (Presently) residing at Village & Post Office: Susuwahi (Malviya Nagar), District: Varanasi (Uttar Pradesh)

..... **Applicant**

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

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi .
2. Additional Director General Personnel Services, Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi - 110001..
3. Director General of Ordinance Service (OS-8B), Integrated Headquarters of Ministry of Defence (Army), New Delhi - 110011.
4. Officer - in - charge, Army Ordinance Corps Records, PIN - 900453, C/O 56 APO.
5. Commandant, Central Vehicle Depot, PIN - 900106, C/O 56 APO.
6. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj.

7. Branch Manager, State Bank of India, Bhabua Branch, Buxar.

.....**Respondents**

Ld. Counsel for the :**ShriJN Mishra,**  
**Central Government Counsel.**

**ORDER (ORAL)**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

*“(a) Issue / pass an order setting aside the letter / order dated 30.08.2018 and letter / order 08.02.2019 (Annexure No. 1 and 2) rejecting the claim of the applicant for grant of Ex – Gratia Lump- Sum-Compensation, after summoning the original records.*

*(b) Issue / pass an order directing the respondents to grant Ex- Gratia Lump - Sum- Compensation to the applicant within a specified period of time.*

*(c) Issue / pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstance of the case.*

*(d) Allow this Original Application with cost.”*

2. Brief facts giving rise to this Original Application are that the son of the applicant namely Sep Ajit Kumar Rai, No. 15815542P was enrolled in Indian Army on 15.04.2009. He died on 06.07.2012

at Central Vehicle Depot, Delhi Cantt due to electrocution. A Court of Inquiry (COI) was held and as per COI death of son of the applicant was due to accident which had taken place due to heavy storm and rain and death was considered as attributable to military service. Applicant was granted Ordinary Family Pension. Applicant represented her case for grant of Special Family which was allowed wef 07.07.2012. She applied for grant of Ex Gratia Lump Sum Compensation which was rejected by the respondents vide letter dated 30.08.2018. Being aggrieved, applicant has filed instant O.A. for grant of Ex Gratia Lump Sum Compensation.

3. Learned counsel for the applicant submitted that son of the applicant while posted at Central Vehicle Depot, Delhi Cantt died on 06.07.2012 due to shock as a result of ante-mortem electrocution. A COI was held on 07.07.2012 to investigate into the circumstances under which Sep Ajit Kumr Rai, son of the applicant was electrocuted in unit area and was declared brought dead at the Base Hospital, Delhi Cantt. COI opined that death of son of the applicant was due to an accident which had taken place due to heavy storm and rain and at the time of incident the deceased was on a bonafide military duty and death was considered as attributable to military duty. The applicant was granted Ordinary Family Pension vide PPO No. F/NA/20397/2013 w.e.f. 07.07.2012 ignoring the fact that accident occurred while on bonafide military

duty and the same was considered as attributable to military service. Her claim for grant of Special Family Pension was rejected against which an appeal dated 16.07.2014 was preferred to the Appellate Committee on First Appeals which accept the contentions of the applicant and decided that she was entitled for Special Family Pension as the death of her son was regarded as attributable to military service. Finally, Special Family Pension was sanctioned and PPO dated 30.03.2016 was issued.

4. Ld. Counsel for the applicant further submitted that applicant applied for grant of Ex-Gratia Lumpsum Compensation from the respondents. Her claim was returned back stating that competent authority for sanctioning Ex-Gratia Lumpsum Compensation was Commandant, Central Vehicle Depot himself. Unit referred the matter to the Army Ordinance Corps Records which was denied vide order dated 30.08.2018. Thereafter, the applicant preferred an application dated 21.12.2018 for reconsideration for grant of Ex-gratia amount which was again rejected vide order dated 08.02.2019 stating that there was no causal connection between death and actual performance of bonafide military duties.

5. Ld. Counsel for the applicant further submitted that Government of India, Ministry of Defence vide letter dated 22.09.1998 introduced the policy relating to grant of Ex-gratia

Lumpsum Compensation for providing compensation to the next of kin of a soldier died in harness in performance of bonafide duties. Vide this letter, one of the conditions for grant of Ex-gratia compensation is that the death of the defence personnel should have occurred due to an accident in course of performance of duty. The letter vizualizes various situations and activities which come within the purview of bonafide official duties for the purpose of grant of Ex-gratia compensation to the bereaved family of defence personnel. In Court of Inquiry it was held that death was attributable to military service and Appellate Committee on First Appeals had also held the applicant is entitled for Special Family Pension but the applicant's claim for grant of Ex-gratia Lumpsum Compensation was rejected. The claim has been denied on unjustifiable and flimsy ground and contrary to the policy of the Government. He pleaded that respondents be directed to grant Ex Gratia Lump Sum Compensation to the applicant.

6. On the other hand, learned Counsel for the respondents submitted that son of the applicant was enrolled in Indian Army on 15.04.2009 and he died on 06.07.2012 due to electrocution. He got electric shock while operating submersible pump switch at bathing point (Dharam Kund) near OR lines CVD Delhi Cantt. Special Family Pension was sanctioned to the applicant. Vide letter dated 03.08.2016, the applicant requested for grant of Ex-gratia

Lumpsum compensation grant of Rs. 10,00,000/-. She was informed that death of her son was considered as attributable to Military Service only for the purpose of Special Family Pension and regarded as physical casualty in peace area. It was also informed that there was no causal connection between the death and actual performance of bonafide military duties of the deceased, therefore, she is not eligible for Ex-gratia amount. However, a sum of Rs. 1,00,000/- was paid to the applicant (next of kin) out of Army Central Welfare Fund (ACWF) vide letter dated 01.03.2014.

7. Ld. Counsel for the respondents urged that the main condition for the payment of Ex-gratia is that death of the employee should have occurred in actual performance of bonafide official duties. He submitted applicant is not entitled for grant of Ex Gratia in terms of MoD letter dated 02.11.2016. He further stated that applicant is also not entitled Ex Gratia in terms of Regulation 140 of Pension Regulations for the Army 2008 (Part-I) Respondents' counsel submitted that the averments made by the applicant regarding competent authority for sanctioning Ex-gratia to be Brigadier rank officer is misleading as the competent authority is PCDA (P), Allahabad and the Brigadier rank officer is approving authority for grant of Ex-gratia lumpsum compensation. PCDA (P), Prayagraj had examined the case and rejected the claim for grant

of Ex Gratia vide letter dated 06.07.2022. He pleaded that instant O.A. has no substance and is liable to be dismissed.

8. We have heard learned counsel for the parties and perused the documents available on record.

9. After hearing learned counsel of both the parties and perusing the evidence on record, the questions which need to be answered are two folds :-

(a) Whether death of son of the applicant who died due to electrocution has casual connection to military duty?

(b) Whether the applicant entitled for Ex-Gratia lump sum compensation.

10. Coming to the first issue 'Whether the death of son of the applicant who died due to electrocution has casual connection to military duty'. We find that Court of Inquiry was of the opinion that death of son of the applicant is an accident which has taken place due to heavy storm and rain and there was no foul play involved in the incident. Son of the applicant was on bonafied military duty and his death was attributable to military service. In the case of ***Paramjit Kaur Versus Union of India and Others***, Original Application No.1954 of 2013, decided on 12.02.2014, Regional Bench, Chandigarh has observed that the word "actual" does not

even exist in the main body of Policy letter. In view of above, we are of the considered opinion that the Court of Inquiry is right in its findings, hence the applicant was granted Special Family Pension.

11. The term 'duty' has been explained in Rule 12 of the Entitlement Rules for Casualty Pensionary Awards, 1982 which is reproduced below :-

**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".*

12. The rules and regulations are guidelines and must be judiciously applied and implemented, keeping in mind, the honour and welfare of all ranks in the Armed Forces. As per Rule 12 of the Entitlement Rules for Casualty Pensionary Awards, 1982, "**A person subject to the disciplinary code of the Armed Forces is on duty**". Son of the applicant was in unit line and he was subject to disciplinary code at the time of incident when he met with an accident and died, hence he shall be deemed to be on bonafied duty.

13. Coming to the second issue, 'Whether the applicant is entitled for Ex-Gratia lump sum compensation? In view of the Policy governing the grant of Ex-Gratia lump-sum-compensation a soldier dying due to the accident in course of duties is entitled for grant of Ex-Gratia lump-sum-compensation'. Since the son of the applicant died due to electrocution in unit line and Court of Inquiry held that the death of the applicant's son is attributable to military service, therefore, the applicant is entitled to the relief claimed by her as per the provisions of Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982.

14. The Government of India, Ministry of Defence letter No.20(1)/98-D(Pay/Services) dated 22.09.1998 deals with regard to conditions of governing the payment of Ex-Gratia lump-sum compensation and guidelines reads as under :-

*"I am directed to refer to Government of India, Ministry of Personnel, Public Grievance & Pension, Department of Pension & Pensioners' Welfare O.M. No.45/55/97-P&PW(C) dated 11.9.98 and state that the President is pleased to decide that the families of Defence Service personnel who die in harness in the performance of their bonafide official duties, shall be paid the following ex-gratia lump sum compensation:-*

(a)	<i>Death occurring due to accident in the course of performance of duties.</i>	<i>Rs.5.00 lakhs"</i>
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15. Subsequently, this table was modified vide Govt of India, Min of Def letter dated 04.06.2010. Case of the applicant is covered under para 2 (a) of this letter which read as under:-

*'the existing rate of ex gratia lump sum compensation to the next of kin of the deceased defence personnel have already been revised as under:-*

(a)	<i>Death occurring due to accident in course of duties</i>	<i>Rs. 10.00 lakhs</i>
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16. In the case of **Smt. Sangita Devi Versus Chief of Army Staff and Others**, Original Application No. 196 of 2015, decided on 19.09.2016 by Regional Bench, Lucknow, wherein the husband of the applicant was returning from his duty on Motorcycle to his quarter in Jalandhar while he met with an accident and sustained severe head injury and subsequently he succumbed to the injuries and in that case in view of the fact he was treated to be on duty and accordingly the denial of Ex-Gratia lump-sum compensation was set aside and applicant was held entitled for Ex-Gratia lump-sum compensation and exemplary cost of Rupees One Lakh was also imposed on the respondents. Reliance has also been placed on an order passed by Regional Bench, Jaipur in Original Application No.843 of 2010 **Smt. Sushila Devi Versus Union of India and Others**, decided on 10.04.2015. In this case the husband of the applicant died on 16.07.2016 in a road accident in Jodhpur. Court of

Inquiry was conducted and death of the deceased soldier was considered to be attributable to military service and applicant was granted Ex Gratia Lump Sum Compensation. Apart from it in a case decided by the Armed Forces Tribunal, Regional Bench, Guwahati, O.A. No. 27 of 2014 **Smt. Mamata Sharma Versus The Union of India and Others**, decided on 18.09.2015, the Ex-Gratia lump-sum compensation was allowed in favour of the applicant's wife. The facts of the case are reproduced from the order of that case are as under :-

*"3. Facts, shorn of details, are that the husband of the applicant was enrolled as a cook in the Army Medical Corps on 23.02.1998. On 27.02.2011 while serving in Military Hospital, Shillong, Meghalaya, husband of the applicant met with a road accident and succumbed to the injuries caused in the said accident. The competent authority investigated into the matter by holding a court of inquiry. In the inquiry the death of the deceased Sepoy has been held as "Attributable to military service". Accordingly, the applicant's (widow of the deceased Sepoy) claim for grant of Special Family Pension has been carefully considered by the competent authority who in turn held that the death of the deceased Sepoy should be recorded "Attributable to Military Service" for the purpose of grant of Special Family Pension to the applicant w.e.f. 26.02.2011 as*

*admissible under the Rules and vide order dated 13.08.2011, the competent authority i.e. SenaChikitsaAbhilekh, Army Medical Corps Records Pin 900450 C/O. 56 APO (Annexure – A to the application) directed the Office of the PCDA (P), Cts 4 Section, Allahabad for issuance of Pension Payment Order (PPO) at the earliest. It also appears that the applicant's claim for grant of ex gratia amount of Rs.5.00 lakhs was not considered.”*

17. In the aforesaid facts and situation the Original Application was allowed and Ex-Gratia lump-sum compensation was granted to the applicant.

18. As per conditions governing the payment of ex-gratia lump sum compensation and guidelines in deciding the issue regarding death of a defence personnel, all evidence “both direct and circumstantial” shall be taken into account and benefit of reasonable doubt be given to the claimant. The impugned order passed by the respondents rejecting ex-gratia lump sum compensation is unjust, arbitrary and against the Principles of natural justice. We are of the view that applicant is entitled for grant of Ex-Gratia lump-sum compensation and therefore, the Original Application deserves to be allowed.

19. The Original Application is hereby **allowed**. The impugned orders passed by the respondents rejecting grant of Ex Gratia Lump Sum Compensation are set aside. The applicant is hereby held entitled to Ex-Gratia lump-sum compensation as per rule on the subject. Respondents are directed to ensure the payment of Ex Gratia Lump Sum Compensation within a period of four months from the date a certified copy of this order is produced before the respondents, failing which they have to pay interest @9% on the amount from the date of its accrual till the date of actual payment.

20. No order as to costs.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : 17<sup>th</sup> July, 2023

Ukt/-