

**RESERVED**  
**Court No 2**  
**Ser No. 13**

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH,**  
**LUCKNOW**  
**O.A. No. 642 of 2022**

**Ran Maya Gurung** Applicant  
 By Legal Practitioner for the Applicant : Shri Vijay Kumar Pandey,  
 Advocate

Shri TK Shukla, Advocate

**Versus**

**Union of India & Ors**  
 Respondents

By Legal Practitioner for Respondents : Shri Namit Sharma,  
 Advocate

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>29.03.2023</u></b>  <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b>  <b><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></b></p> <p>Judgment pronounced.            O. A. No. 642 of 2022 is allowed.            For orders, see our judgment and order of date passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh)            Member (A)</p> <p>(Justice Anil Kumar)            Member (J)</p> <p><i>rspal</i></p>

**Reserved**  
Court -2  
(Ser No. 13)

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

**Original Application No. 642 of 2022**

Wednesday, this the 29<sup>th</sup> day of March 2023

**Hon'ble Mr. Justice Anil Kumar, Member (J)**

**Hon'ble Maj Gen Sanjay Singh, Member (A)**

Smt. Ran Maya Gurung, w/o Late No. 5754715, Ex Rfn/Sepoy Am Bahadur Gurung, R/o- Wailing Nagar Palika, Ward No. 8, Kedarnath Marg, Syangja (Nepal)

..... Applicant

Ld. Counsel for the: **Shri Vijay Kumar Pandey**, Advocate  
Applicant **Shri TK Shukla**, Advocate

**Versus**

1. Union of India, through its Secretary Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. OIC Record, Records 58 G.T.C., Shillong.
3. PCDA (P), Draupadighat, Allahabad (U.P.)-211014

.....Respondents

Ld. Counsel for the Respondents. :**Shri Namit Sharma**, Advocate  
Central Govt. Counsel

## ORDER

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

(a) That this Hon'ble Tribunal may kindly be pleased to direct the opp. Parties to grant the Special Family Pension or Liberalized Family Pension or Battle Casualty Pension instead of Ordinary Family Pension to the applicant for life with arrear from the date of death of her husband i.e. 31.07.2000 to actual date of payment and also onwards, an provide the interest on the aforesaid delayed amount of Special Family Pension with 18% p.a. since due date to actual date of payment in the interest of justice.

(b) That this Hon'ble Tribunal may kindly be pleased to award the cost Rs. 20,20,000/- (Rs. Twenty Lac and Twenty Thousand Only) to the applicant against the opposite parties.

(c) That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.

2. Applicant's husband No. 5754715 Rifleman (Late) Am Bahadur Gurung was enrolled in the Army on 18.12.1995. After completion of military training he was posted at 58 Gorkha Rifles w.e.f. 02.03.1997. While posted in High Altitude Area he suffered with "**HIGH ALTITUDE PULMONARY ODEMA SEPTICEMIA**" and expired on 30.07.2000. Applicant was granted ordinary family pension vide PPO No. F/NA/4287/2001, which she is in receipt of. After death of Army person benefits of Army Group Insurance were paid @ 50% share each to his mother and applicant. Consequent to applicant's remarriage on 10.03.2003 ordinary family pension was stopped which was restored w.e.f. 01.01.2006 vide PPO No. 176202100611-3000 dated 02.08.2021 consequent to change in policy. This O.A. has been filed for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that while posted at High Altitude Area applicant's husband suffered with breathlessness and he was admitted to 167 Military Hospital on 10.07.2000 where he remained upto 19.07.2000. Thereafter, he was referred to General Hospital, Leh by road on 27.07.2000 with complaints of fever, sore throat and dry unproductive cough of three days duration and was diagnosed with 'Bronchopneumonia' i.e. HAPO (High Altitude Pulmonary Oedema. He was managed with inhalation and antibiotic by the medical authorities but due to increase in the fluffy opacities in both lungs he died on duty on 30.07.2000. Learned counsel for the applicant further submitted that applicant was fully fit physically and mentally when he was enrolled in the Army. It was further submitted that subsequent ailments, which he suffered, were due to military service, hence should be attributable to military service. Further submission of learned counsel for the applicant is that since applicant's husband was on duty at the time of death, his death should be attributable to military service and denial of Special Family Pension to deceased soldier's wife is arbitrary in nature. Relying upon Rule 14 of Entitlement Rules for Casualty Pensionary Awards, 1982, learned counsel for the applicant contended that NOK-wife of the deceased soldier is entitled to Special Family Pension.

4. On the other hand, learned counsel for the respondents submitted that since as per AFMSF-93 Part-II (Ver-2002) the cause of death is not attributable to the military service for the reason that service factors have played no role in aggravating the disease. The 14 days Charter of Duties service before the death of the deceased soldier also does not arise to military conditions. Therefore, applicant is not entitled to Special Family Pension. He further submitted that in view of denial of attributability vide certificate dated

30.07.2000 applicant's disease/disability is neither attributable to nor aggravated by military service. He pleaded for dismissal of O.A.

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

6. Admittedly, the applicant's husband was enrolled in Indian Army on 18.12.1995. During the course of his service while posted in High Altitude Area (HAA) he was admitted to 167 Military Hospital on 10.07.2000 and was transferred to General Hospital, Leh on 27.07.2000 where on admission he died on 30.07.2000 due to HAPO.

7. Before proceeding further, we would like to determine whether applicant's husband was on duty when he died due to '**HIGH ALTITUDE PULMONARY ODEMA SEPTICEMIA (HAPO)**'. With regard to definition of "duty" we rely on Appendix II of Clause 12 of Entitlement Rules for Casualty Pensionary Award 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 trial 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.”*

8. Thus, keeping in view the aforesaid ruling and the fact that the deceased soldier was on bonafide military duty at the time of death, he seems to be on duty.

9. Additionally, respondents while filing counter affidavit in Para 2 have also admitted that the deceased soldier was on bonafide military duty at Leh and he died due to **HIGH ALTITUDE PULMONARY ODEMA SEPTICEMIA**

**(HAPO)** on 30.07.2000 while on duty, which makes it clear that applicant's husband was on duty when his death took place.

10. In this case we would like to mention that though post-mortem report says that the disease with which applicant died was not attributable to military service, but the fact is that the deceased soldier was posted in High Altitude Area where he suffered with HAPO on duty and subsequently he died in a Military Hospital. Resultantly, since applicant's husband died while on duty, his NOK i.e. the applicant is entitled to receive Special Family Pension.

11. Apropos above we are of the view that death of applicant's husband is attributable to military service as it occurred while he was on bonafide military duty.

12. In view of the above, we **allow** this O.A. directing the respondents to release Special Family Pension to applicant with effect from three years preceding the date of filing of this O.A. This O.A. was filed on 05.08.2022. Difference of arrears may be worked out and paid to applicant within four months.

13. 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 @ 9% p.a.

14. No order as to cost.

15. Pending application(s), if any, stand disposed off.

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

**(Justice Anil Kumar)**  
**Member (J)**

Dated: 29<sup>th</sup> March, 2023  
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