

RESERVED
Court No. 1

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

Original Application No. 105 of 2017

Tuesday, this the 27th day of November, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Smt. Poonam Shukla, W/o No. 13995992, Late LNK (DVR)
Raghvendra Shukla, Resident of Vijay Nagar, Sector – A, Malak
Road, Neelmatha, District Lucknow.

.... Applicant

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

Versus

1. Union of India through Ministry of Defence, New Delhi.
2. ESM Service Center, H.Q. Madhya, UP, Sub Area,
Lucknow.
3. Office of PCDA (P), Gts-4 Section, Allahabad.

..Respondents

Ld. Counsel for the: **Shri Amit Jaiswal, Advocate.**
Respondents.

ORDER

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

1. Present Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers :-

“(a) to set aside the impugned order dated 22.03.2017 passed by the opposite party no-3 by which he has rejected the claim of applicant by misinterpreting the Rules contained as Annexure No-1 to this application.

(b) To direct the opposite parties to consider and take necessary action for payment of Ex-Gratia claim of No.13995992, Late LNK (Dvr) Raghvendra Shukla.

(c) to issue any other appropriate order or direction as this Hon’ble Tribunal deem fit and proper in nature and circumstances of the case.

(d) to allow this application in favour of the applicant with cost.”

2. Couched in brevity, the facts as emerging from the pleadings on record are that the husband of the applicant [No.13995992, Late LNK (Dvr) Raghvendra Shukla] was serving with 4004 Field Hospital w.e.f. 24.11.2008. He was granted 34 days Part of Annual Leave (PAL) w.e.f. 26.02.2011 to 30.03.2011. He proceeded on the said leave to his home station, Gonda (UP) along with his father Shri Saryu Prasad Shukla by Avadh Assam Express. On 22.02.2011 around 02.00 hours his father found him missing from his berth. His mortal remains were found near Ekma Railway Station, District Chhapra (Bihar) on 02.03.2011. The Court of Inquiry held to inquire the death, opined that (a) *The*

cause of death of No. 13995992A LNK (Dvr MT) Raghvendra Shukla is accidentally falling down from the train and (b) The Individual died due to train accident during journey period of PAL 2011. Therefore, death of individual is attributable to military service. Accordingly, claim for special family pension was forwarded by R.O., which was admitted vide Office PPO No. F/11776/2011. The applicant applied for Ex-Gratia claim before the respondent No.2 who has forwarded the same to respondent No.3 to take action on the Ex-Gratia claim of the applicant. Finding no response from respondent No. 3, respondent no. 2 issued reminders on 21.07.2014, 08.08.2014 and 06.06.2015 but respondent No.3 did not respond to those reminders. Thereafter, the applicant i.e. the wife of Late No.13995992A LNK (Dvr MT) Raghvendra Shukla filed the Original Application No. 227 of 2016 in this Tribunal for Ex-Gratia lump-sum-compensation. This Tribunal vide its order dated 02.09.2016 has directed the respondents to look into the grievance of the applicant and take a decision expeditiously for payment of Ex-Gratia claim in accordance with rules by a speaking and reasoned order. The Record Office thereafter has forwarded the Ex-Gratia lump-sum-compensation claim of Rs.10.00 Lacs in favour of the applicant vide its letter dated 27.02.2017. However, the Principal Controller of Defence Accounts (Pension), Allahabad has rejected the claim of the applicant vide their letter No.G4/PHP-II/OA-227/16/2017 dated 22.03.2017 stating that the husband of the applicant has

died due to falling from train while proceeding on PAL and is hence not performing any bonafide official duty. Therefore, Ex-Gratia lumpsum compensation is not admissible as per existing Government Order/clarification. Feeling aggrieved by refusal by PCDA (P), Allahabad to grant Ex-Gratia lump sum payment, the applicant filed the present Original Application.

3. Ld. Counsel for the applicant has pleaded that as per Para 12(D) of Entitlement Rules the individual will be treated on duty when proceeding from his duty station to his leave station or returning from his leave station, irrespective of the mode of conveyance whether private or provided by Government. He pleaded that the husband of the applicant had died during journey period, hence, his death is attributable to military service and therefore, the applicant is entitled to Ex-Gratia lump-sum-compensation.

4. Per contra, the Respondents have filed Counter Affidavit. In the Counter Affidavit the Respondents have stated that the main condition to be satisfied for the payment of Ex-Gratia lump sum compensation in the specified circumstances is that the death of the employee concerned should have occurred in the actual performance of a bonafide official duty. The Ex-Gratia lump sum compensation may not be sanctioned in cases where the deceased soldier was on duty in terms of Entitlement Rules but not in actual performance of bonafide official duties in accordance

to para of 1 of Government of India, Ministry of Defence letter No.20/1/98/D(Pay)/Services) dated 22.09.1998. The Ld. Counsel for the respondents submitted that the question whether death was attributable to or aggravated by military service is to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982. Set of rules for special family pension and Ex-Gratia are different. The Entitlement Rules, 2008 is for Casualty Pensionary Award and not for Ex-Gratia. Respondents have contended that the Court of Inquiry had recommended that Individual died due to train accident during journey period of PAL 2011. Therefore, death of individual is attributable to military service. However, the same has not been agreed to by PCDA (P), Allahabad as bonafide duty for the purpose of Ex-Gratia lump-sum-compensation.

5. After hearing both the sides and perusing the evidence on record, the question which need to be answered are two folds :-

- (a) Whether travel period to and fro during leave be treated as duty as per Entitlement Rules?
- (b) If yes, is the applicant entitled for Ex-Gratia lump sum compensation.

6. The Government of India, Ministry of Defence letter No.20(1)/98-D(Pay/Services) dated 22.09.1998 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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Subsequently, this table has been modified in the year 2010.

7. Coming to the first issue as to, “is the death attributable to military service?” we find that Court of Inquiry has opined that the cause of death of No. 13995992A LNK (Dvr MT) Raghvendra Shukla is accidentally falling down from the train and the Individual died due to train accident during journey period of PAL 2011, therefore, death of applicant’s husband shall be deemed to be attributable to military service.

8. It is pertinent to mention here that the applicant’s husband was posted in field area and the place where he was posted a journey period of four days was allowed to avail the leave. Thus the applicant’s husband was granted PAL w.e.f. 26.02.2011 to 30.03.2011 and he was travelling to avail the said leave on

22.02.2011 when he met with the accident which has been held by the Court of Inquiry to be attributable to military duty.

9. In view of above, we are of the considered opinion that the Court of Inquiry is right in its findings that death of applicant's husband was attributable to military service.

10. Thus, coming to the second issue, as to, "is the applicant entitled for Ex-Gratia lump sum compensation?"

11. The submission of the Ld. Counsel for the applicant is that 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 applicant as per the provisions of Rule 12 of the Entitlement Rules for Casualty Pensionary Awards 1982 was to be treated to be on duty and in the instant case the Court of Inquiry held that the death of the applicant's husband is attributable to military service, therefore, the applicant is entitled to the relief claimed by her.

12. Per contra, Ld. Counsel for the respondents argued that for the purpose of Ex-Gratia lump-sum-compensation a person must be performing a bonafide military duty and the applicant's husband was not performing any bonafide military duty. It has also been argued by the Ld. Counsel for the respondents that Para 12 of the Entitlement Rules for Casualty Pensionary Awards 1982 the applicant's husband can only treated to be on army duty

while actually he was not, therefore, the same cannot be treated at par with bonafide military duty.

13. Along with Counter Affidavit the Government of India, Ministry of Defence letter dated 22.09.1998 has also been filed on behalf of the respondents and we find that para 5 of the said Annexure is relevant in the instant case which reads as under :-

“Railways also pay compensation to the next of kin of passengers killed in train accidents. Therefore, the ex-gratia compensation admissible in terms of clause (a) of Para – 1 of these orders shall be reduced by the compensation, if any, received by the next of kin of service personnel killed in train accidents while travelling on duty.”

14. The above Ministry of Defence letter dated 22.09.1998 shows that the persons died while travelling by Railways on duty are also entitled for Ex-Gratia lump-sum compensation. However, it is provided that if they receive any compensation from the Railways then the said amount shall be deducted from the amount of Ex-Gratia lump-sum compensation. Admittedly, it is not the case of the respondents that the applicant has also received any compensation from the Railways. This paragraph clearly shows that the persons while travelling on Army Duty are also entitled to Ex-Gratia lump-sum compensation in case of their death during journey by train.

15. Reliance has been placed by the Ld. Counsel for the applicant in the case of Paramjit Kaur Versus Union of India and Others, Original Application No.1954 of 2013, decided on 12.02.2014, wherein Regional Bench, Chandigarh has observed that the word “actual” does not even exist in the main body of Policy letter. Reliance has also been placed 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 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 that case the husband of the applicant died on 16.07.2016 in a road accident in Jodhpur. In that case a Court of Inquiry was conducted and death of the deceased soldier was considered to be attributable to military service. 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. Sena Chikitsa Abhilekh, 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."

16. In the aforesaid facts and situation the Original Application was allowed and Ex-Gratia lump-sum compensation was allowed in favour of the applicant.

17. We have asked the Ld. Counsel for the respondents whether any Appeal has been preferred against these pronouncements of the Regional Benches, then the Ld. Counsel for the respondents could not produce any contrary judgment or any order of the Hon'ble Apex Court or any order wherein contrary view was taken. On 03.10.2018 the Ld. Counsel for the respondents was given time to file case laws wherein a contrary finding was given, but the Ld. Counsel for the respondents failed to produce before us any case law wherein a contrary view was taken. Therefore, keeping in view the settled principle of law of precedent that the Judgments of coordinate Bench are binding we are of the view that this case has to be decided in view of the law laid down by the coordinate Benches in the aforementioned cases.

18. Admittedly, the husband of the applicant was travelling to avail his PAL and before he reached his destination he met with an accident and fell from the Train and ultimately he died. The

Rule 12 of the Entitlement Rules for Casualty Pensionary Awards, 1982 is very relevant in this case, which is reproduced as under:-

“Note 2 (d) Personnel while travelling between places of duty to leave station and vice versa to be treated on duty irrespective of whether they are in physical possession of railway warrant/concession vouchers/cash TA etc or not. An individual on authorized leave would be deemed to be entitled to travel at public expense.”

19. Admittedly, in this case the husband of the applicant was travelling to avail his PAL. Therefore, in view of the above he has to be deemed to be on military duty and has rightly been held so by the Court of Inquiry. The Court of Inquiry was held in this matter and the finding of the Court of Inquiry is as under :-

“(a) The cause of death of No. 13995992A LNK (Dvr MT) Raghvendra Shukla is accidentally falling down from the train

(b) The Individual died due to train accident during journey period of PAL 2011.

Therefore, death of individual is attributable to military service.”

20. Admittedly, in view of the findings of the Court of Inquiry the claim of the applicant for Special Family Pension was forwarded by the Record Office, which was admitted and Special Family

Pension was sanctioned to the applicant. In pursuance of the order dated 02.09.2016, passed by this Tribunal in the earlier Original Application No.227 fo 2017 Smt. Poonam Shukla Versus Union of India, a speaking order was passed by the competent authority on 22.03.2017 on the ground which are mentioned in para 7 and 8 of the impugned order, the relevant part reads as under :-

“7. Thus, the ex-gratia lump sum compensation may not be sanctioned in cases where the deceased soldier was on duty in terms of Entitlement rules but not in actual performance of bonafide official duties in accordance to para – 1 of Annexure of GOI, MOD letter dated 22.09.1998 (read with illustrative examples of the death cases in the Appendix appended with Govt. Letter dated 22.09.19998.

8. That, the individual in the present case died due to falling from train while proceeding on PAL and is hence not performing any bonafide official duty. Therefore ex-gratia lumpsum compensation in the instant case is inadmissible as per existing Govt. orders/clarification.”

21. Thus the refusal by the competent authority for grant of Ex-Gratia lump-sum compensation was only on the ground that the applicant was not performing any bonafide official duty. Thus keeping in view of the earlier pronouncement of the several

Armed Forces Tribunals that have attained finality by lapse of time and no contrary view on the point could be brought to our notice in spite of availing an opportunity for this purpose, 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.

22. The Original Application is hereby **allowed**. The impugned order dated 22.03.2017, enclosed as Annexure No. 1 of Original Application, is set aside. The applicant is hereby held entitled to Ex-Gratia lump-sum compensation of Rs.10.00 Lakhs. Respondents are directed to ensure the payment 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.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: November 2018

AKD/-