

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BNCH AT NAINITAL)**

**ORIGINAL APPLICATION No.273of 2023**

Wednesday, this the 20<sup>th</sup> day of September, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Smt. Basanti Dhami, W/o Late Hav Inder Singh, Army No. 4190426N Resident of Padampur, Dewaliya, Lalkuan, Post Motahaldu, Tehsil – Lalkuan, District- Nainital, Uttarakhand- 263139.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Anil Kumar Bisht, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, DHQ Post New Delhi - 110011.
2. The Chief of the Army Staff, IHQ of MoD (Army) South Block, DHQ Post New Delhi – 110011.
3. The Adjutant General (Through ADG/PS), IHQ of MoD (Army) South Block, DHQ Post New Delhi – 110011.
4. The DGAFMS/GD (Pen) vide Kumaon Regiment Record (Records), PIN- 900473, C/o 56 APO,
5. PCDA (P), Draupadighat, Allahabad (U.P.) - 211014.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Rajesh Sharma,  
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) Call for relevant records of the applicant and after perusal thereof, set aside the order dated 16<sup>th</sup> April 2019 passed by the respondents rejecting the Special Family Pension.*

*(b) Issue an order or directions directing the respondent/authorities to grant the Special Family Pension.*

*(c) Issue such other order(s)/ directions(s) as may be deemed appropriate in the facts and circumstance of the case.”*

2. The undisputed factual matrix on record is that the husband of the applicant Nk Late Hav Inder Singh was enrolled in the Indian Army on 16.12.1996. In August 2017, husband of the applicant was deputed at New Delhi for preparation of NCC cadets for Independence Parade 2017 and was staying in unit

line. He was found dead on 15.08.2017 in unit line, DG NCC Camp, New Delhi. Death certificate was issued to the effect that husband of the applicant died due to **“ISCHEMIC HEART DISEASE”**. Death of the husband of the applicant was accepted by Commanding Officer 77 NK Bn NCC Almora as attributable to Military service. Applicant was granted Ordinary Family Pension. Her claim for grant of Special Family pension was rejected vide letter dated 16.04.2019. Being aggrieved, applicant has filed instant O.A. for grant of Special Family Pension.

3. Learned counsel for the applicant submitted that husband of applicant served the Indian Army from 1996 to 2017 with complete devotion and dedication at different places including difficult postings in High Altitude/High Area under extreme climatic conditions and also participated in various Operations, which had its toll on applicant's husband health. He was awarded Sainya Sewa Medal with Claps J&K, 9 years Long Service Medal, 50<sup>th</sup> Anniversary Medal, Uchh Tung Medal, Special Service Medal and 20 years Long Service Medal for his good conduct and exemplary service. He was in SHAPE-1 medical category. He was found dead on 15.08.2017 in unit line, DG NCC Camp, New Delhi. Court of Inquiry opined that the death took place during performance of military duty and death

was considered as Attributable to Military Service. However, Medical authority at Base Hospital, Delhi Cantt had considered the death of the husband of the applicant as not Attributable to Military Service. Hence, the applicant was granted Ordinary Family Pension and later on Enhanced rate of Ordinary Family Pension. Her claim for grant of Special Family Pension was rejected stating that medical authority has considered death of husband of the applicant as neither attributable to nor aggravated by military service. He further submitted that applicant was fully fit in all respects at the time of enrolment and the death of applicant's husband is due to service conditions. Further submission of learned counsel for the applicant is that since applicant's husband was on duty at the time of death and his death was considered as attributable to military service by Court of Inquiry, denial of Special Family Pension to applicant is arbitrary in nature. 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 husband of the applicant was attached with HQ DG NCC Camp with effect from 16.07.2017. He died in night on 15.08.2017 due to disease "**ISCHEMIC HEART DISEASE**" and at the time of death, he was not on army duty. A Court of Inquiry

was held and death of husband of the applicant was considered as Attributable to Military Service. Death of husband of the applicant was considered as not attributable to military service by HQ Delhi Area (Med) and cause of death was **“ISCHEMIC HEART DISEASE”**. Applicant was granted Ordinary Family Pension and later on he was granted Enhanced rate of family pension. Claim of the applicant for grant of Special Family Pension was processed but the same was rejected vide Records, The Kumon Regiment letter dated 16.04.2019.

5. Learned counsel for the respondents submitted that as per paragraph 5.1 of Govt of India, Min of Def letter No 1(2)/97/D (Pen-C) dated 31 Jan 2001, “In case of death of an Armed Forces Personnel under the circumstances mentioned in category “B” or “C” of Paragraph 4, Special Family Pension shall continue to be admissible to the families of such personnel under the same conditions as in force hithertofore. There shall be no condition of minimum service on the date of death for grant of Special Family Pension. Further as per para 105 of Pension Regulation for the Army 2008, Special Family Pension may be granted to the next of kin of service personnel if his death occurred due to disease which was attributable or aggravated to military service. Learned counsel for the respondents submitted that in view of subject case being against existing Govt policy, O.A. does not have any

substance and merit in the principles of natural justice, hence the same deserves to be dismissed in the interest of justice.

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

7. The question crops up whether the death of husband of the applicant can be treated as attributable to military service and whether applicant is entitled for grant of Special Family Pension or not?

8. Conditions for grant of Special Family Pension are governed by Regulation 105 of the Pension Regulations for the Army (Part-1), 2008 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.*

9. It is a case where the death of the deceased soldier was considered by the competent authority as not connected with military service, hence applicant was granted Ordinary Family Pension and later on she was granted Enhanced rate of family pension and Special Family Pension was denied to her.

10. After having heard the submissions of learned counsel of both sides we find that certain facts are admitted to both the parties. Husband of the applicant was enrolled in Indian Army on 16.12.1996. He died during service on 15.08.2017 due to **“ISCHEMIC HEART DISEASE”**. Applicant was granted Ordinary Family Pension after death of her husband and later on she was granted Enhanced

rate of ordinary Family Pension. The respondents denied Special Family Pension to the applicant due to reason that death of husband of the applicant was considered as not attributable to military service by competent medical authority, hence she was 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, death should be attributable to military service.

12. We have considered the applicant's case and we find that death of husband of the applicant was considered as not attributable to military service, hence applicant is not entitled to special family pension.

13. In the result, we hold that applicant does not fulfill criteria for grant of Special Family Pension and her claim has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

14. No order as to cost.

**(Vice Admiral Atul Kumar Jain)(Justice Ravindra Nath Kakkar)**  
**Member (A) Member (J)**

Dated : 20 September, 2023

Ukt/-