

**RESERVED**

**COURT No.1**

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

**ORIGINAL APPLICATION No. 566 of 2017**

Friday, this the 6<sup>th</sup> day of July, 2018

**Hon'ble Mr. Justice SVS Rathore, Member (J)**

**Hon'ble Air Marshal BBP Sinha, Member (A)**

Smt Pushpa Devi, widow of Army No. JC 765840 Late Sub Bijay Kumar,  
resident of Quarter No. 963/8, PAC Lines, Old Cantt, Allahabad

**...Applicant**

Ld. Counsel for the Applicant : **Shri JN Misahra, Advocate**

Vs.

1. Union of India through Secretary, Ministry of Defence, (Army)  
South Block, New Delhi, 110010.
2. Chief of the Army Staff, IHQ of Mod (Army), South Block New  
Delhi.
3. OIC Records, EME Records, C/o 56 APO-900453
4. PCDA (P) Draupadi Ghat, Allahabad, U.P.
5. The Commanding Officer, 804, Fd Workshop Coy EME, PIN –  
906804, C/o 56 APO.

**..... Respondents**

Ld. Counsel for the Respondents: **Shri Asheesh Agnihotri, Advocate,**

Assisted by **:Maj Rajshri Nigam, OIC Legal Cell.**

**ORDER**

**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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 issue/pass an order or direction to the respondents to set-aside/quash the arbitrary order of rejection of Ex Gratia Lump Sum compensation passed by PCDA (P) Allahabad under their letter No. G4/PHP-1/2264/2015, Annexed as Annexure No. A-1 of this Original Application.*

*(B) To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant against the respondents.*

*(C) To issue/pass any other order or direction for Ex Gratia Lump Sum compensation to the applicant with 18% interest from the actual date of payment i.e. 14.10.13.*

*(D) Allow this application with costs.*

2. Couched in brevity, the facts as emerging from the pleadings on record are that the husband of the applicant (JC 765840 Late Sub Bijay Kumar) was enrolled in the Indian Army, (Corps of EME) on 04.04.1985 and was promoted as Subedar (Welder). On 13.10.2013 while returning from his Unit Temple on his motorcycle, he met with an accident with a Tempo near Rasoolabad Road, Tellar Ganj, Allahabad and sustained severe injury on his head, abdomen and wrists. He was admitted to nearest Thaper Polyclinic, 304 Field Hospital and was subsequently shifted to Military Hospital, Allahabad where he succumbed to his injuries on 14.10.2013. A Court of Inquiry was instituted to investigate the circumstances under which husband of the applicant met with an accident and finally died. In the Court of Inquiry, as many as ten witnesses

deposed and on the basis their evidence, the Court of Inquiry concluded that on the date of accident and ultimate death, the husband of the applicant was on bona fide military duty and his death was attributable to military service. Recommendation was made by the competent authority for grant of special family pension and ex-gratia payment to the widow (applicant). However, the PCDA (P) Allahabad rejected the claim of the applicant vide their letter no. G-4/PHP/PFO121492014 dated 05.09.2014 stating that it was observed during course of Audit that the Court of Inquiry had indicated that the individual has met with an accident while he was going to market for his personal job. The PCDA (P) Allahabad has thereafter granted Ordinary Family Pension to the widow. Feeling aggrieved by refusal of PCDA (P) Allahabad to grant Special Family Pension and Ex-Gratia lump sum payment, the applicant approached this Tribunal by preferring a petition which was dismissed on technical grounds vide order dated 11.01.2016 passed by this Tribunal with liberty to the applicant to file fresh petition. Hence, the present Original Application.

3. Before proceeding further, we feel it apposite to mention that the applicant has not made a direct prayer for grant of Special Family Pension. However, from the pleadings on record and facts emerging during hearing of the case, it is amply clear that the purpose and intent of the Original Application is not restricted only for grant of Ex-Gratia lump sum payment but also for grant of Special Family Pension.

4. Learned counsel for the applicant has brought to the notice of this Tribunal, Information Brochure issued by the Personnel Services Directorate, Adjutant General's Branch (Annexure-8) wherein terms of condition of service, allowances and pensionary entitlements and payment

of Ex-Gratia lump sum payment to widow/next of kin of service personnel who died while performing duties have been detailed and argued that the applicant is entitled to receive Special Family Pension and Rupees ten lacs as Ex-Gratia lump sum payment. Learned counsel for the applicant also argued at Bar that the PCDA (P) has rejected claim of the applicant for grant of Special Family Pension on the ground that casualty suffered by applicant's husband did not bear any causal connection to military duty on wrong premise. He strenuously argued that a Pooja was organized at the Unit Mandir. The applicant had attended the Pooja and while returning he met with the fatal accident.

5. Per contra, learned 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 Rule for Causality Pensionary Awards, 1982. He conceded that the Court of Inquiry had recommended the late JCO's death to be attributable to military service. However, the same has not been agreed by the PCDA (P) Allahabad on ground of non allotment of duty on Sunday and that the applicant's husband had gone to market after attending Pooja when he met with the unfortunate accident.

6. After hearing both the sides and perusing the evidence on record, the questions which need to be answered are twofold:-

- (a) Was the death of the husband of the applicant attributable to military service?
- (b) If yes, is the applicant entitled for Special Family Pension and Ex-Gratia compensation?

7. Coming to the first issue as to, "is the death attributable to military service?" we find that there is a need to understand the importance of

place of worship in a combat force like Army. All wars and battles all over the world are fought only after performing certain religious ceremonies as per traditions of the fighting force. Hence, place of worship has special importance in Indian Army, so much so, that religious teachers are employed in these places of worship through direct recruitment as JCOs. Thus, Pooja in Mandirs on special occasions is important and required to be attended by all.

8. In this particular case, Dussehra Pooja was planned in the Unit and hence, as a JCO, the husband of the applicant was required to attend it. These are traditions of Army and no written order or charter of duty is required for this purpose. It is in this perspective that Court of Inquiry has called the accident as attributable to military service. We are also surprised to find that PCDA (P) Allahabad has ignored the findings and conclusion of the Court of Inquiry and picked up single sentence selectively to justify denial of attributability to military service.

9. The sentence in the Court of Inquiry picked up by PCDA (P) Allahabad states that the deceased soldier had gone to market for personal job and met an accident in Unit Area. However, the Court of Inquiry has still concluded it to be attributable to military service. This aspect has to be understood in proper perspective. Firstly, Allahabad is a congested area and markets are all along the roads, secondly; a soldier who had come for Pooja as an official requirement, and after Pooja was returning to his home, if he deviates a few hundred meters from main route for a personal job, by all rationality and logic, the same cannot be so narrowly interpreted as to deny him attributability to military service. Such an interpretation will amount to travesty of justice.

10. In view of the above, we are of the considered opinion that the Court of Inquiry is right in its findings of death of the applicant's husband as attributable to military service. However, we would like to clarify that though the death of the applicant's husband is attributable to military service, he cannot be said to have died in harness or actual performance of duty, hence the applicant is not eligible for Ex-Gratia compensation as prayed for.

11. Thus, coming to the second issue, as to, "is the applicant entitled for Special Family Pension and Ex-Gratia compensation?", in the light of our above mentioned observations, it can be summarised that the applicant is eligible for Special Family Pension, but not eligible for Ex-Gratia compensation.

12. In the premise, we allow the O.A. in part. Impugned order of PCDA (P) Allahabad as given in Annexure-1 to the O.A. is hereby set aside. The prayer for grant of Ex-Gratia lump sum compensation is rejected. The applicant shall be granted Special Family Pension as permissible under relevant Rules within four months from the date of production of a certified copy of this order failing which the applicant shall be entitled to simple interest at the rate of 9% per annum from due date, till the date of actual payment.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

**Dated: 06.07.2018**  
anb